

Fort Wainwright Access (Private Lands East of Ft Wainwright)

1947-1953: The U.S. Army acquired additional lands to expand Ladd Army Airfield (now Ft Wainwright). This was done through a series of condemnations and federal dedications.

Several old homesteads are located east of Ft Wainwright and north of the Chena River. Early access was via the number of trails that partially correspond to existing roads on base. Ownership of most private parcels has since changed hands.

Military restrictions on public access across Ft Wainwright varied over the years, ranging from "open base" policies (unlimited access), gate closures and secured gates with visitor passes issued to cross the base. But in general, the right of public access through Ft Wainwright was not an issue until the late 1970's.

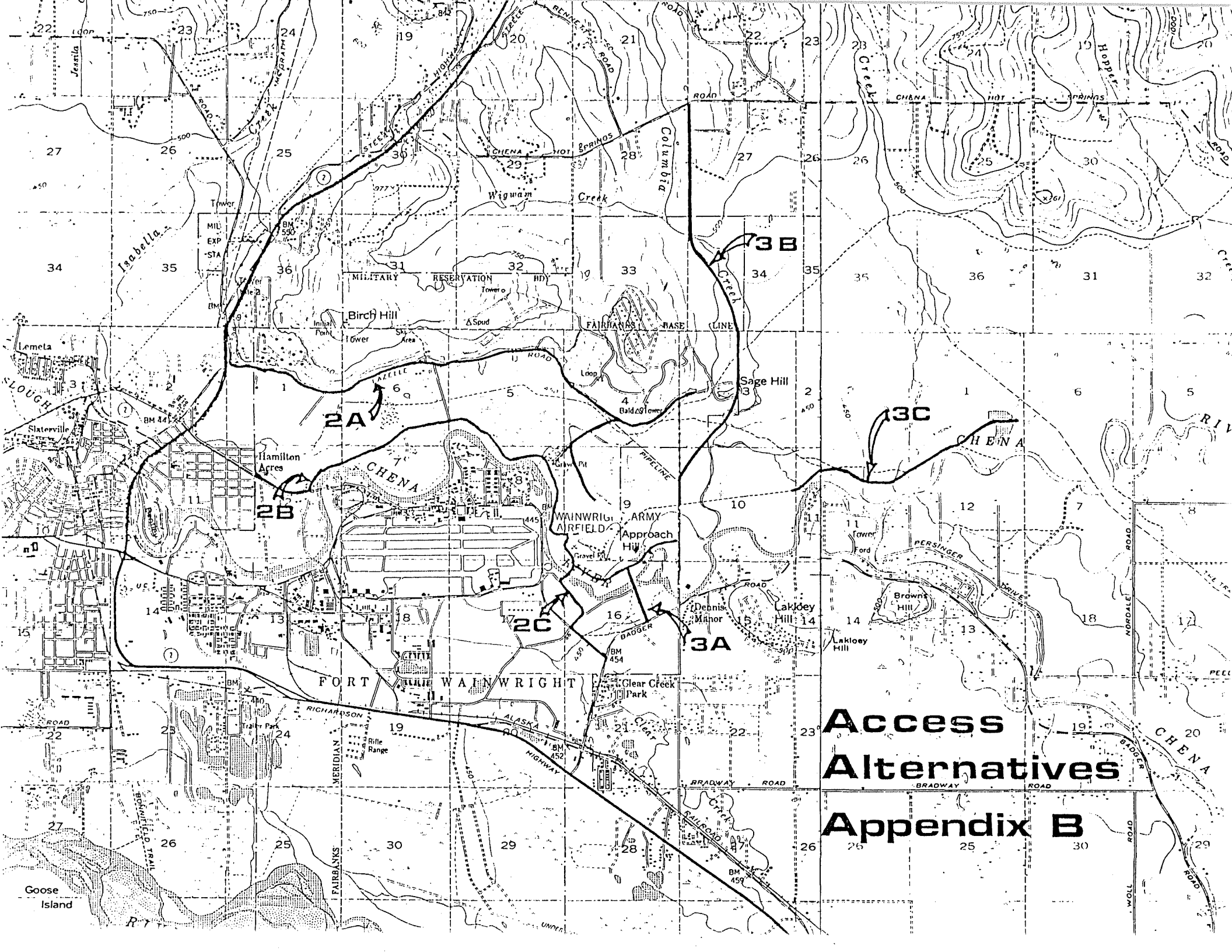
In 1979, the Fairbanks North Star Borough (FNSB) denied approval of a subdivision plat located in the area (owned by Paul Shultz). The Borough ruled that the absence of legal access to the property did not comply with the FNSB Platting Ordinance. Without an approved subdivision, Mr. Shultz could not develop and sell his property. About the same time, Ft Wainwright was targeted as the headquarters for a new "Light Infantry Battalion," and the Army was rapidly moving toward more restrictive access policies.

There were a series of meetings between 1981-1984 involving property owners, local official, DOT&PF and DNR staff and the Army. DOT&PF identified alternate access routes from Chena Hot Springs Road, Nordale Road and Badger Road (new Chena River bridge). Despite talk of cooperation, no agency was willing to take on the responsibility for funding and implementing a project.

Mr. Shultz went to federal court claiming that there were a number of valid RS-2477 routes across the base. In 1991, the court ruled that the plaintiff did not prove evidence of any specific historic right of ways across Ft Wainwright. In 1993, a federal appeals court overruled the decision, stating that the issue was about right of access and that proof of continuous existence of a specific route was not required. However, a second part of the appeals court ruling was that the Army "may reasonably regulate his access."

Based on this decision, the FNSB approved this and other subdivision plats in the area. New houses were constructed, and new residents have moved in. For the past 15 years or more, Ft Wainwright has had a very liberal open base policy with no permits or passes required most of this time. This dramatically changed on September 11, 2001. Homeowners were issued passes to travel across base, but they are subject to inspections and delays.

The need for alternate public access has again become an issue.



Access Alternatives

Appendix B

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: File

DATE: March 29, 1984

FILE NO: 30FW

TELEPHONE NO: (907) 452-4281

FROM:

John D. Martin
John D. Martin, P.E., Manager
Systems & Program Development
Division of Planning
Northern Region

SUBJECT: Ft. Wainwright Access

Today I met with Ken Swanson, Director of Engineering & Housing, Ft. Wainwright. He stated that he would be unable to make any formal response on any of the options that the Department of Transportation & Public Facilities (DOT&PF) is proposing; that his role in this effort would be to pursue the development of a new access route and that he would coordinate the following activities:

1. Provide technical engineering assistance.
2. Pursue the acquisition of a bailey bridge for the project.
3. Take care of any land transfer arrangements.

He suggested that I send a formal request from the Department to the Post Commander, Colonel Driver, to get an official position on each of the alternatives that have been developed by DOT&PF. He stated that he would not be in a position to comment on legal issues such as public access north of the Chena River.

JDM:lat

cc: H. Glenzer, Jr., Deputy Commissioner, Northern Region
John Horn, Director, Maintenance & Operations, Northern Region
Bill McMullen, Director, Design & Construction, Northern Region
Jonathon Widdis, Manager, Area & Local Planning, Northern Region

MEMORANDUM

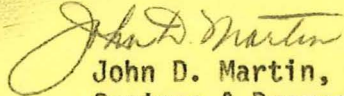
State of Alaska Department of Transportation & Public Facilities

TO: File

DATE: March 28, 1984

FILE NO: 30FW

TELEPHONE NO: (907) 479-4281

FROM: 
John D. Martin, P.E., Manager
Systems & Program Development
Division of Planning

SUBJECT: Ft. Wainwright Access
Issue

At 2:00 p.m. on Wednesday, March 14, there was a meeting to discuss the Ft. Wainwright Access Issue. In attendance were:

General Bethke
Colonel Driver
Colonel Froehle
Major Shelton
Major Wheeler
Major Williams
Major Estridge
Ken Swanson

Glen Glenzer
John Horn
Bill McMullen
John Martin

Glen Glenzer opened the meeting presenting the background on the access issue. He also presented the Fairbanks North Star Borough's position and the potential of Borough litigation.

General Bethke stated that he felt that at issue was Mr. Schultz' desire to subdivide versus control of the Post. He stated that since the closure of the gates there has been a 67% reduction in larceny and vandalism on Post. He also mentioned that the closure of the Post restricts truckers from bypassing the scales. He felt that the options were to open the Post or to provide land for a bypass.

Glenn suggested that the staff prepare a joint list of options. One option that was discussed was the preparation of an agreement between the U.S. Army and the Department of Transportation & Public Facilities (DOT&PF) to provide for alternate access to such time as funding was available. It was felt that this agreement in conjunction with the existing access arrangement would satisfy the requirements for financing and subdivision.

One issue that Colonel Froehle brought up was that in order to give land to the DOT&PF, the Army would have to excess the land. At that time Cook Inlet Regional Corporation would have an opportunity to claim that land. Any transfer of land would have to be done extremely carefully. General Bethke said that such an agreement would be signed by high level officials within the Department of the Army so that his successors would be firmly bound by the agreement.

General Bethke appointed Ken Swanson (Director of Engineering and Housing, Ft. Wainwright) to be the primary contact on this issue and Glen Glenzer appointed John Martin to be the primary contact for DOT&PF.

Colonel Driver expressed concern that Mayor Allen had not contacted him regarding the potential of a suit between the Fairbanks North Star Borough and the Military.

The meeting adjourned after approximately 1/2 hour.

JDM:lat

cc: Glenzer, Horn, McMullen, Widdie

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

INTERIOR REGION, Deputy Commissioner

Bill Sheffield, Governor

2301 PEGER ROAD
FAIRBANKS, ALASKA 99701
(907) 452-1911

January 6, 1984

RE: Access to Public Lands
East of Ft. Wainwright

Bill Allen, Mayor
Fairbanks North Star Borough
P.O. Box 1267
Fairbanks, AK 99707

Dear Bill:

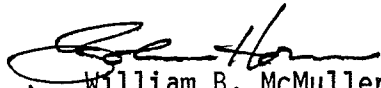
This is further to our discussion of the Ft. Wainwright access issue as discussed in a meeting with you, Representative Bob Bettisworth, et. al. on December 20, 1983. In such regard, we are pleased to submit herewith a comprehensive DOT&PF Summary Issue Analysis pertaining to the matter. As you can see, the issue is complex and past efforts toward a satisfactory resolution have been substantial.

Bill, the offer of DOT&PF continuing assistance in this matter through negotiation with the U.S. Army remains. We respectfully suggest, however, that prior to such continued negotiations, you may wish to review this summary in some detail. After your review, I think we should have another session to clearly define our strategy before a meeting with any representatives of the U.S. Army.

We trust you will find this Summary Issue Analysis an enlightening documentary of the history in this matter and a reasonable presentation of possible alternatives for resolution. Further, should you or your designee(s) wish to research the matter further, please feel free to access our files (Re: Appendix D).

We will await your further comments before contacting General Bethke for a meeting to try and bring this matter to a satisfactory resolution.

Sincerely,

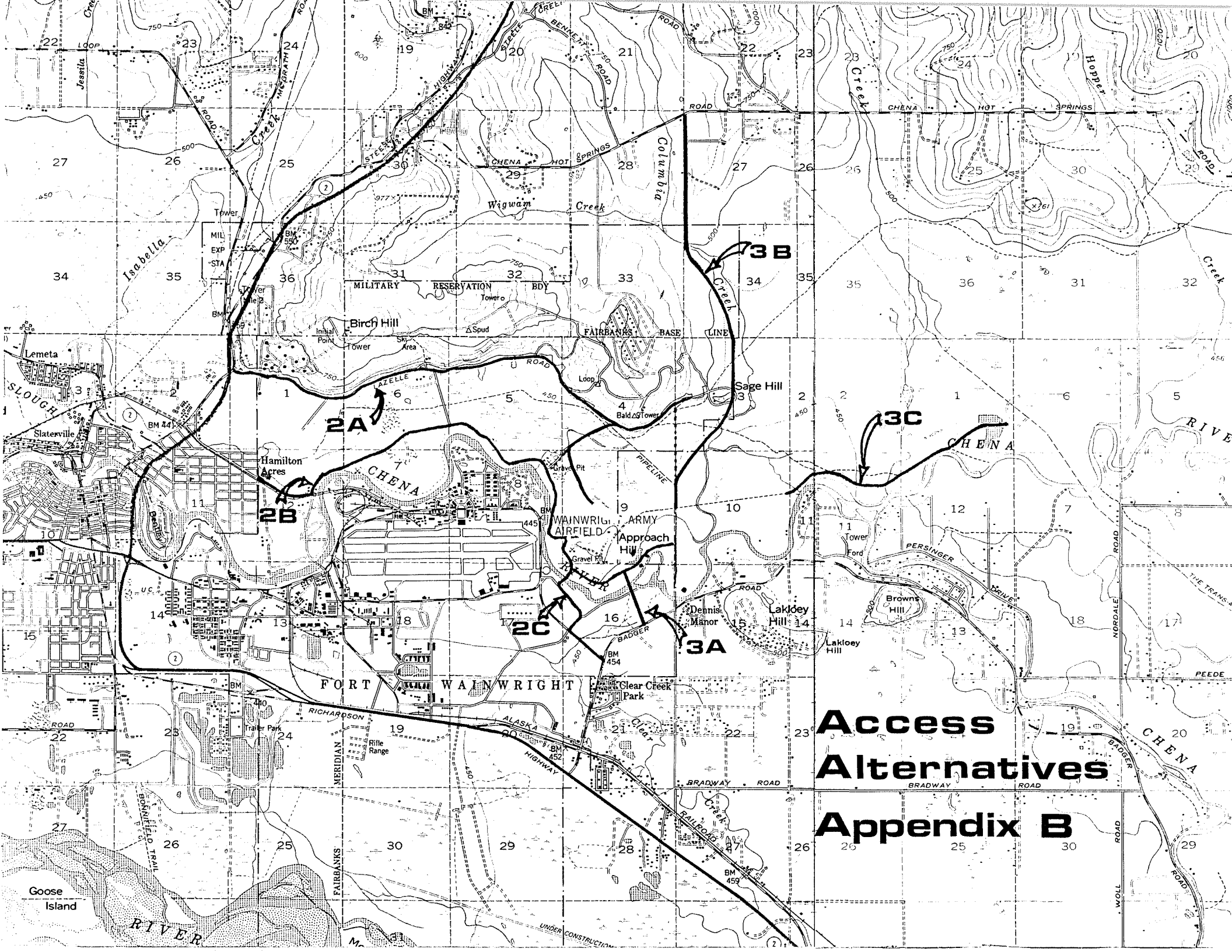

A

William B. McMullen, P.E.
Acting Deputy Commissioner

jp

Attachment

cc: Representative Bob Bettisworth
H. Glenzer, Jr., Acting Commissioner



**Access
Alternatives
Appendix B**

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

INTERIOR REGION, Deputy Commissioner

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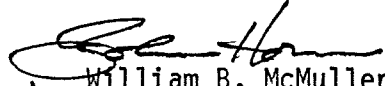
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Sincerely,


A vertical line with a small 'A' at the bottom is drawn below the signature.

William B. McMullen, P.E.
Acting Deputy Commissioner

jp

Attachment

cc: Representative Bob Bettisworth
H. Glenzer, Jr., Acting Commissioner

FORT WAINWRIGHT ACCESS
ISSUE ANALYSIS

Analyst: Jerry Rafson
January 3, 1984

ISSUE

Access for private and State property east of Fort Wainwright is provided on a restricted basis via roads on the military reservation. The Fairbanks North Star Borough does not permit subdivision and banks will not finance these properties with this access arrangement. Future access through Ft. Wainwright is not guaranteed. Dedicated public access is desired. A chronology of events is included as Appendix D to this report.

BACKGROUND

Documentation of dedicated public access and the expenditure of public funds on access to this area from the Steese Highway dates back to 1914. Although these roads are not marked on the DOT&PF Trails Inventory, access is marked through Fort Wainwright on roads south of the Chena River (see Appendix F). Regardless, access north of the river can still be claimed under Revised Statute 2477 (73 U.S.C. 932), a federal law dating to 1866. Although this statute was repealed in 1976 by Public Law 94-579 sec. 706 (90 stat. 2793), those rights-of-way previously established remain valid. RS 2477 is discussed in more detail in Appendix C. A listing of DOT&PF documentation of the rights-of-way is included in Appendix E.

The Army claims that any rights-of-way which may have existed reverted to the U.S. government through a series of condemnations and land acquisitions between 1947 and 1953 in which the lands surrounding the roads in question were acquired to complete expansion of the Ladd Army Airfield (now Ft. Wainwright) boundaries. They claim there is no evidence of continual public use of the roads in question after this time. Whether these rights-of-way were ever legally reverted remains in dispute.

Military restrictions on public access to these rights-of-way have varied ranging from requirement of visitor passes and various gate closures to virtually unlimited access at times during the seventies. However, until about 1979, the public's right to access through the military reservation to the affected lands was never openly questioned. Access was never completely denied, in spite of the inconvenience caused by restricted access.

In 1979 Paul Shultz was prevented by the Fairbanks North Star Borough from subdividing his property east of Fort Wainwright because the Army would not give assurance of continued public access through the military reservation. Commercial banks have reportedly refused to finance land or improvements in this area.

Mr. Shultz attempted to gain relief through the auspices of U.S. Senator Stevens, who appealed to the BLM, but to no avail. The State of Alaska was drawn into

the controversy when the Department of Natural Resources (DNR) indicated in its land disposal plans for the area that access through the military reservation was available. It was shortly after this that the Army announced it was again closing free public access through Ft. Wainwright, effective June 15, 1981.

The military also announced a policy of limiting access passes to existing property owners and further aggravated the situation by causing occasional delays of private deliveries of building materials to the area.

The Department of Transportation & Public Facilities (DOT&PF) immediately advised the Army in a letter to Ernest L. Woods, Jr., Chief, Real Estate Division, Corps of Engineers, that our documentation indicated Lazelle Road and Trainor Gate Road were public roads, and that we opposed to any restrictions being placed on them. This documentation was furnished the Corps at their request, however the Corps disassociated themselves from the issue by deferring further response to the Army Commander.

The impact of the Army's actions soon led to meetings between Borough officials, DNR, DOT&PF and the U.S. Army to consider solutions to the problems. The affected property owners have also been involved in several of the meetings.

The Army's legitimate and primary concern seems to be security. While they are continuing to allow limited private access to property owners through the issuance of passes, they have been opposed to the issuance of passes to additional new property owners. It should be noted that continued public access continues to be required and granted for non-military purposes, such as access to the BLM district office.

While the Army has been opposed to any solution which would open up public access through the military reservation, they have, in the past, agreed to a compromise solution which would entail construction of an alternative access. A meeting was held on September 14, 1982 between Commissioner of the Department of Natural Resources, John Katz, and Brigadier General Nathan Vail, Commander of the 172nd Infantry Brigade (Alaska). At that time General Vail made a commitment to "offer every possible assistance, including use of engineer troops to assist in the construction, and if approved by Department of the Army, the temporary construction of a bailey bridge across the Chena River until such time as the State Department of Transportation could acquire funds from the State Legislature for construction of a permanent bridge." This commitment is stated in the memorandum for record prepared by the Army after this meeting.

General Vail assured Commissioner Katz that this promise would be carried out by him or his successor. The new Commander, General Bethke, apparently does not feel he can legally authorize the construction and has raised a concern over the liability which might be incurred by the construction of a one-lane bridge. Originally authority for bridge construction was to be accomplished under the Civilian Aid Program.

AGENCY INVOLVEMENT

DOT&PF became involved in the issue because of the question of legality of the closure of an established public right-of-way and because of the agencies'

expertise in developing and implementing possible alternative solutions which might require construction of new facilities.

The Department has been contacted repeatedly by Mr. Shultz for assistance in resolving this issue, most recently in a letter to Commissioner Casey containing an 18 signature petition and in a number of calls and meetings with regional personnel.

The cost of DOT&PF involvement to this point is conservatively estimated at \$12,000. This does not include the cost of two written opinions received from the State Attorney General's office or the considerable effort expended with meetings and letters by other agencies.

DNR has been heavily involved in negotiations for a solution because of its interest in disposing of lands in the affected area and because of the leverage they are able to exert on the military through the permitting of military use of State lands. It was through the efforts of DNR that a series of meetings were arranged which led to the September 14th compromise.

The Office of the Governor became involved in the controversy after the following events: access was restricted in 1981; the Army refused to negotiate at the meeting held June 25, 1981; and the Army consented only to grant a limited number of temporary passes until such time as alternate access could be constructed.

September 30, 1981, Governor Jay S. Hammond wrote General Vail stating that the [Army's] suggestion that the public find a route around Ft. Wainwright was unacceptable, and that the State would press the legal issue if the established traditional means of access were subjected to continual arbitrary closing.

The Citizen Advisory Commission on Federal Areas was also contacted by Mr. Shultz in an effort to resolve the issues. The Commission staff have met with Army officials and have corresponded with the State Attorney General's office. Unable to reach a satisfactory solution the Advisory Commission referred the issue back to DOT&PF in a letter to DOT&PF Commissioner Daniel Casey on February 23, 1983.

State Representative Bob Bettisworth has requested DOT&PF to take action to resolve this issue. In a letter dated October 20, 1983 He has requested a full factual analysis of the situation. Consistent with Governor Hammond's and previous DNR and DOT&PF positions, he would like to see full public access from the Steese Highway restored.

On September 25, 1979, Senator Ted Stevens wrote Curtis McVee, Alaska State Director of the Bureau of Land Management (BLM) to determine what valid existing access rights may exist. BLM responded that the homestead patents did not specifically mention access rights. Senator Stevens was again involved in June 1981 after the Army reintroduced access restrictions on Ft. Wainwright. He noted that there were additional reasons for allowing public access to the Post for non-military matters, such as visiting the BLM office there. He advocated investigating alternative solutions to the Army's security concerns other than public access closure. Most recently, Senator Stevens has indicated that the military's security concerns must be a high priority.

The Fairbanks North Star Borough has been involved in this controversy from the time it erupted in 1979. They required Mr. Shultz to obtain an affidavit from the military guaranteeing public access prior to their approval of his subdivision request. The Borough also objected to State disposal of lands to be accessed through the military reservation.

John Carlson, Borough Mayor at the time, and James Nordale, Borough Attorney, were present at several critical meetings where compromise alternatives requiring bridge construction were worked out. An estimate was provided to the Borough by DOT&PF for the cost of constructing a Chena River Crossing from Badger Road. This was to be considered for the Borough's Capital Improvement funding request to the State, but it was never included in any formal funding requests.

It should be noted that although the newly developed Borough Comprehensive Plan classifies this area as outskirts, improved access could bring it into the perimeter area and encourage more intense development. More recently, Borough Mayor B.B. Allen has taken an active interest in the issue and has contacted Acting Deputy Commissioner William McMullen to review attempts to coordinate a satisfactory solution to the problem.

ALTERNATIVES

A number of alternative solutions are listed and discussed below. A matrix comparing these alternatives is included as Appendix A.

1. Continue restricted access through Fort Wainwright.
 2. Secure free public access via existing rights-of-way.
 3. Construct new alternate access around the military reservation.
1. Continued access through Ft. Wainwright via issuance of necessary passes by the Army could form the basis for a compromise if there were some guarantee that this policy were not subject to unilateral change by the Army, and that permission would be granted on a non-prejudicial basis. If in the future traffic generated by development of this area increased to the point where security could no longer be controlled or street capacity becomes a factor, alternate solutions could then be implemented.

This would by far be the lowest cost and most expeditious solution. The Army may object because of security reasons, but the Military could also increase security at sensitive military areas. This action must now certainly be required given continued public access to BLM offices, which are sure to generate more traffic than any foreseeable development in the area in question.

Property owners may not be entirely satisfied, because they will continue to have essentially the same restricted access. However, they should be able to subdivide and secure bank loans.

2. A preferable solution to the property owners would be to secure unrestricted free public access over existing roads.

Three routes have been identified for this purpose and are shown in Appendix B:

Route 2A - FROM STEESE EXPRESSWAY

This route follows existing Lazelle Road from the Steese Expressway until connecting with River Road. River Road eventually extends beyond the Military Reservation.

Route 2B - FROM TRAINOR GATE ROAD

This route enters the Military Reservation at Trainor Gate Road and immediately intersects River Road.

Route 2C - FROM MONTGOMERY ROAD

This route following Montgomery west from Badger Road to the first intersection which leads to the east Chena River Bridge and onto River Road. This would allow public access without compromising security to existing facilities, except perhaps the golf course.

There are basically two options for approaching this.

Negotiation: Efforts have to date not proven fruitful. The Army's position is unlikely to be favorable to this solution which would reduce their security. DNR could conceivably become involved as a landowner in the area. DNR could also use its negotiating leverage to achieve the same end.

Litigation: The next logical option. This could cost hundreds of thousands of dollars, and could take years to resolve. The responsible party to make this legal challenge would also have to be identified. This action would take place in Federal Court.

The outcome would by no means be certain and an unfavorable decision could have negative future repercussions for the State of Alaska.

At best, a decision against the Army could result in damages awarded to property owners and possibly force the Army to construct alternative access or condemn the affected property. Closure of the existing roads is likely to remain in effect as long as the Army believes it is in their best security interest. This could possibly make this the most expensive alternative overall. A lawsuit would certainly make it the most time consuming alternative. Should the Army win the lawsuit, it is likely the Army would force alternative access to be used. Some entity would have to fund this construction in any circumstance and the possibility exists that existing access could be jeopardized in the interim.

While DOT&PF involvement in a lawsuit would be complicated by the fact that this route is not on the designated State Highway System, Lazelle Road once provided access to Chena Hot Springs Road. This access is now provided by

a direct connection between Chena Hot Springs Road and the Steese Expressway. Designation would entail a commitment for maintenance.

3. Construction of new alternative public access is probably the best long term solution to the problem, however, it is also among the most expensive. Three primary options have been identified.

Route 3A - BRIDGE THE CHENA RIVER

The possibility of constructing a new bridge across the Chena River at Dennis Road was studied in 1981. At that time the cost of the bridge was estimated at \$2,885,000 for a structure and approaches meeting secondary highways standards. Adding inflation and the approximate 0.8 mile of new road which would be required brings the cost estimate for construction of this route to \$3,335,000.

While such a bridge may be the best long-term solution to the access problem, the cost seems excessive in view of the current traffic volumes of an estimated 25 trips per day.

A more acceptable version of option 3A may be to install a lower cost temporary bridge structure that could be replaced when development north of the river warranted a permanent bridge.

Route 3B - FROM CHENA HOT SPRINGS ROAD

Route 3B begins at 3 mile Chena Hot Springs Road and runs south along a section line easement for the first mile. The proposal would then enter Military lands and would bend to the east to provide clearance from Ft. Wainwright's ammunition storage area. Ft. Wainwright officials have indicated that the Military would grant an easement for the new road. As drawn on the map, the route may not be quite as far from the ammunition storage area as the Military would like. However, shifting the route any farther to the east would place it on the extremely poor foundations that prevail along Columbia Creek. Even as drawn, portions of the route encounter less than favorable foundation conditions.

From the Fairbanks Base Line, Route 3B runs south along the boundary of Ft. Wainwright and then bends back to the west to terminate at the 1/4 corner between Section 9 and 10.

Except for a short cut section at Sage Hill, Route 3B would be all overlay construction. This would entail 3.8 miles of new roadway. The cost of constructing a minimum standard 20 ft. road along the Route 3B is estimated at \$825,000. Given potential for development of this area, it is questionable whether a 20 ft. road width would meet long range needs.

Route 3C - FROM NORDALE ROAD

There is an existing road running west from Nordale Road through the center of

Section 6. This road was originally built to provide access to the large gravel pits in the southeast corner of Section 1. The road has since been extended 1/4 mile beyond the gravel pits. Route 3C would extend this road westward along the north side of the river to connect to an existing road that runs east-west across Section 10.

The new segment of road would be 1.5 miles long and would require acquisition of private property. The cost of a minimum standard roadway for Route 3C is estimated at \$550,000, including approximately \$250,000 for right-of-way. This route would also include 2 creek crossings and one crossing of the Alyeska pipeline, however, it is assumed these costs would be covered in the estimate. This estimate is also based on a 20 ft road width.

One of these options would no doubt be the preferred solution from the Army's perspective, as it would not impact security.

This solution would be less satisfactory to the property owners than free public access over existing roads, because any of the new alternative access options would add to the travel distance to the city center. The bridge option may however be preferable over the prospect of continual restricted access.

Through the history of past negotiations it would seem that this solution, and in particular the option of crossing the Chena River near Badger Road, would be an acceptable compromise. It seems that the sticking point is the matter of who would pay the cost, which, according to DOT&PF estimates, could run to \$3 million for construction phases and an additional amount for maintenance.

Each agency involved must weigh the benefits of such a project against its other identified priorities.

The Army had offered in the past to construct a temporary bridge until such time as funding for a permanent structure could be secured. DNR, as a property owner in the area, also stands to gain and has, in fact, used its leverage to negotiate this solution.

It is unknown how the other property owners in the area would react, however, they might be expected to be progressively more negative toward solutions requiring large capital outlays by them, or increase their travel distance and lower property values.

Any solution meant to be long term should be acceptable to the majority of the parties involved, therefore, it is necessary to compare the costs and financing of the new alternative access.

Development of the area will be somewhat dependent on distance to the job market. Were Routes 3B or 3C constructed, the land would remain in the outskirts area and the 20 year projection would be for less than 140 dwelling units in the area, generating up to 900 trips per day. Constructing the bridge Route 3A would presumably move this area into the perimeter zone, thus doubling the allowable density.

The affect on property values is unknown, but, using an average vehicle operating cost of \$0.20 per vehicle mile traveled, it can be seen that the difference in user costs between the longest option, 3C, and the shortest option, 3A, could amount to \$2000 per day 20 years from now. At the present, with at least four

dwelling units located in the area, the increased user cost would amount to approximately \$20,000 annually.

Road maintenance costs are primarily related to the additional length of road to be maintained. Route 3C, from Nordale Road and Route 3B, from Chena Hot Springs Road, would each require approximately 4 miles of additional road maintenance, which at an annual maintenance cost of \$6,000 per mile, would cost approximately \$24,000 per year.

Route 3A would require approximately 1 mile of additional road maintenance to reach the same point.

It should be noted that property owners in the area are now providing maintenance for approximately 1 mile of roads in the area, and the Military provides the remainder. New construction cost comparisons have been made, which show construction of a permanent bridge per Route 3A to have by far the highest capital cost, which probably could not be compensated for in maintenance cost but may be justified when user costs are added.

Route 3B from Chena Hot Springs Road would create user savings (assuming the majority of user trips are to the Fairbanks City Center) which over a short period of time could more than compensate for the construction cost difference of \$325,000 between it and the Nordale Road Option, which is the lowest capital cost, highest user cost alternative. It would also provide better direct access to State land disposal areas. The Army has indicated a willingness to work with the State in providing right-of-way for this route.

Route 3C to Nordale Road has two other complications worth mentioning, a possible pipeline crossing conflict and uncertain right-of-way status for several miles of existing road which must be traversed. This route would, however, provide access to additional prime development lands lying north of the Chena River and between Fort Wainwright and Nordale Road.

FINANCING ALTERNATIVES

As stated earlier, the method of financing the costs for these options will be a prime factor in their acceptability.

Under all alternatives user costs will no doubt continue to be financed by individuals. Changes in property values either positive or negative will also no doubt accrue to individuals and also possibly to DNR.

Construction costs could be born by the Army, the State, private developers and/or by a service area. The Borough has in the past been the recipient of block grants for service areas and also receives funding through the Local Service Roads and Trails (LSR&T) program which could be used for this purpose.

The service area option should also be given careful consideration as a mechanism for road maintenance. Of course, formation of a service area would require a service area election.

The affected property owners would likely oppose financing of any sort of loan, however, a State Service Area Grant might be accepted.

DOT&PF financing of either construction or maintenance is not consistent with stated departmental priorities, as this road is for local use. DOT&PF interests in this case apparently lie in its role as protector of public access.

SUMMARY

1. Previous efforts by State officials have not been fruitful.
2. Continued negotiations might be undertaken from a Commissioner level to General Bethke. The negotiating strategy is to press for public access through Fort Wainwright along Lazelle or Trainor Gate and River Roads on the basis of RS 2477. Fencing and other security measures should be re-explored.
3. An option of public access through Badger Gate could be presented (Route 2C in the attached figure). Public access could be allowed along Montgomery Road to a point approximately 4/10 of a mile west of Badger Road, where a local street connects with the East Chena River Bridge. The Badger Gate could be relocated beyond this point. Public traffic would skirt the golf course, cross the east Chena River Bridge and head east along the existing route to the non-military lands. Property owners should be consulted before his option is pursued.
4. Another approach would be to pursue the Military's offer of construction assistance through General Bethke and possibly higher. Senator Stevens office might be of assistance in pursuing this.

UNRESOLVED QUESTIONS AND ISSUES

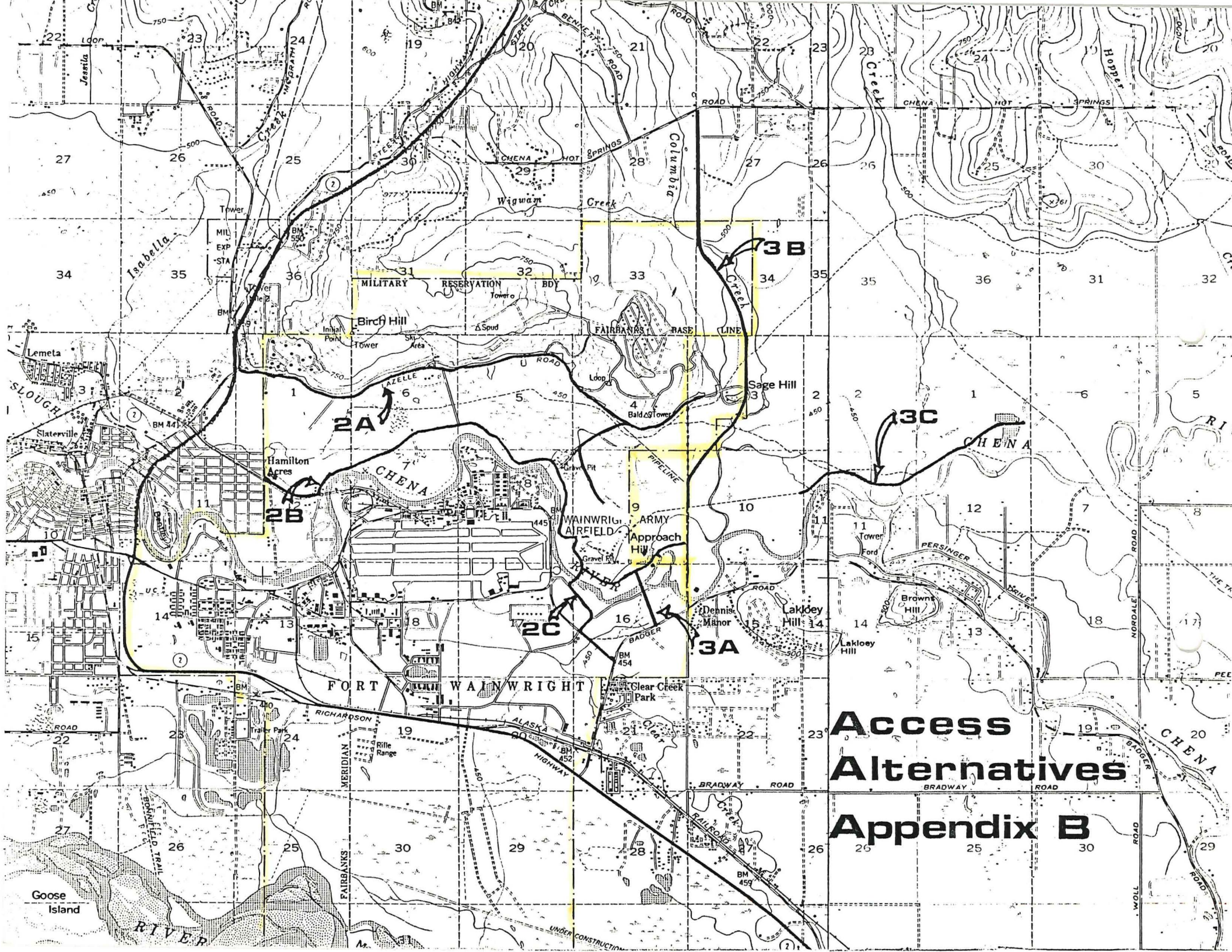
The analysis to date does not resolve a number of important questions and issues which might be better understood through a comprehensive planning effort, as would normally be done by the Department. It has not included a comprehensive public involvement process or in-depth research to verify many of the facts contained in the files.

Some of the additional questions and issues which should be pursued are:

1. Research access rights established at the time the property involved was first acquired.
2. Research any subsequent transfer of these rights.
3. The property owners are requesting pursuit of one specific course of action. These persons should be consulted prior to initiation of contrary action by the State.
4. Responsibility for and funding required for further action must be determined. If this matter is to be pursued by the State with public funds, it is felt that a broader perspective must be achieved, including identification of benefits to be achieved for the public at large, rather than a specific group of property owners.
5. The cost of additional security measures, such as guards, fencing, illumination, and electronic surveillance should be evaluated. conducted.

APPENDIX A
COMPARISON OF ALTERNATIVES

Security Risk	Distance to Downtown PO (miles)	New Const. Req'd./Cost	Legal Action Req'd.	New ROW Req'd.	Add'l. Maint. Req'd.	Comments
<u>Alternative 1</u> Continued Restricted Access	6.8	Additional security measures/ cost unknown	No	None	0	Considered a short term solution
<u>Alternative 2</u> Free public access on existing roads	Alt. 2A 6.7 Alt. 2B 7.0 Alt. 2C 9.0	Additional security measures/ cost unknown	Very Likely	None	0	Could lead directly to necessity to construct new access option or condemnation of property -would establish damages and fund alternatives were the Army to lose. Property owners could lose existing access rights if the Army wins litigation.
<u>Alternative 3</u>						
Route A - Bridge Chena River	8.5	0.8 mi of road & new bridge \$3,335,000 Temporary bridge?	No	Yes Military Cost Unknown	0.8 mile \$5000/yr	Military participation could be pursued.
Route B - Access from Chena Hot Springs	10.6	3.8 miles of road/825,000	No	Military & State	3.8 miles \$23,000/yr	Minimum standard 20 ft wide road.
Route C - Access from Nordale	18.8	1.5 miles of new road \$550,000	No	Approx 4 miles State & private	Approx 4 miles \$24,000/yr	Minimum standard 20 ft width requires 2 stream crossings. Pipeline Crossing permit may also be required. Existing roads may require additional improvement.



Access Alternatives

Appendix B

APPENDIX C - REVISED STATUTE 2477

The full text of Revised Statute 2477 reads as follows:

Sec. 2477, R.S. The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted (U.S.C., title 43, sec. 932.)

Revised Statute 2477 forms the basis for claim for a large number of public rights-of-way in several states including Alaska, which were never formally applied for or designated. It provided a blanket authority for rights-of-way for the construction of highways over public lands not previously reserved for public uses but did not establish a criteria for documenting this acquisition.

If a claimed RS 2477 right of way is challenged, the law does not specify whether the claim must be proved or disproved, nor does it specify what constitutes legal proof.

There is also no requirement in the law to show continued public use after a right-of-way is established in order for it to remain valid.

Although RS 2477 was repealed in 1976 by Public Law 94-579 sec. 706 (90 stat. 2793), those rights-of-way previously established remain valid.

This whole process is now in the courts to resolve disputes between various federal agencies and several states. The Division of Planning and the Office of the Attorney General have not researched cases which present legal precedents for this issue. The Office of the Attorney General has, however, reviewed the situation and provided a written summary of their findings (memo from Norman Gorsuch to Stephen Sisk dated April 13, 1983).

Although some BLM Fairbanks District Office personnel have conceded that claims must be disproved, it seems that to be safe the State must be prepared to provide documentation in the form of maps, surveys, old aerial photos, historical accounts, depositions of users and other evidence which may be available.

Since RS 2477 was written briefly and in a non-specific manner, it does not establish criteria for determining the exact location and width of the right-of-way. Therefore, with the exception of a few major roads specified through public land orders and secretarial orders, the location is established by the land physically occupied by the roadway.

APPENDIX D
CHRONOLOGY OF EVENTS - SUMMARY OF DOT&PF FILE

September 25, 1979 Letter, Senator Stevens to Curtis McVee, BLM requesting research into Mr. Shultz's valid existing rights

November 7, 1979 Letter, Curtis McVee to Senator Stevens stating patents for Mr. Shultz's land do not mention access

November 26, 1979 Letter, Chris Whittlock, BLM to Senator Stevens responding to letters of November 7 and September 25

April 28, 1980 Letter, Mayor Carlson FNSB to Claude Hoffman, DNR objecting to Potlatch Ponds disposal on basis of lack of adequate access

March 28, 1980 Letter, Claude Hoffman, DNR to Phil Berrian, FNSB Planning Director re: Two Rivers/Potlatch Ponds asserting legal access exists on section lines

March 28, 1980 Letter, Paul Schutt, DNR to Carl Johnson BLM stating DNR research indicates Lazelle Road is legal access, requesting documentation if BLM believes this to be contrary

May 28, 1980 Memo, Chris Guinn, DNR to Ted Smith DNR outlining Borough's problems with access to a disposal

October 8, 1980 Paul Shultz obtains cost estimate for ACROW bridge

November 12, 1980 Letter, Joseph Darnell of Sen. Steven's office to Curtis McVee, BLM re: follow up inquiry on BLM research of issue

December 4, 1980 Letter, Curtis McVee, State Director BLM to Senator Stevens stating Shultz response was low priority

February 23, 1981 Letter, Paul Shultz to Ernest Woods Jr., Corps of Engineers requesting and sending \$440.00 payment for recovery of documents pertaining to Ft. Wainwright lands and access

March 13, 1981 Letter, Ernest Woods Jr., Chief, Real Estate Div., Corps of Engineers to Paul Shultz, property owner containing documents pertaining to Ft. Wainwright lands, also stating they could not locate any documents concerning vacations or limitations to use of access

June 5, 1981 Letter, Paul Wild, DOT&PF to Ernest Woods Jr., Corps of Engineers opposing restrictions on Lazelle and River roads, requests documentation of Army authority

June 10, 1981 Newspaper prints article reviewing Shultz's problems and complaints, documents government action

June 12, 1981 Letter, Ernest Woods Jr., Corps of Engineers to Paul Wild, DOT&PF requesting documentation of claims of public right-of-way for Lazelle and River Roads

June 15, 1981 Newspaper prints articles documenting difficulties created by access restrictions imposed that date

June 17, 1981 Memo, Steve Sisk, DOT&PF to Charles Matlock, DOT&PF Director of Highway Design & Construction enclosing documentation and correspondence covering issue

June 17, 1981 Letter, Paul Wild, DOT&PF Right of Way agent to Ernest Woods Jr., Corps of Engineers providing documentation of DOT&PF assertion of public right-of-way

June 19, 1981 Memo, Frank Mielke, DNR Chief, Land Management to DNR Deputy Commissioner Haynes re: telecon with Commissioner LeResche on status of negotiations, difficulty in setting up meeting with Army

June 19, 1981 Newspaper prints article concerning Shultz's confrontation with MP's occurring that morning

June 19, 1981 Army courier delivers to Sen. Stevens's Fairbanks office the Army's reasoning for reinstatement of access restrictions

June 22, 1981 Newspaper prints article quoting Senator Stevens position on gate closing

June 25, 1981 Meeting at Ft. Wainwright. Attendees included Paul Wild, DOT&PF, Haynes, Frechione, Copeland and Mielke from DNR, John Athens, A.G. office, 6 property owners, Mayor Carlson and James Nordale, FNSB, Col. Brown, Ft. Wainwright Commander, Maj. Shelton, and Capt. Cook, Army legal officer, Tom Ostneberg, Ft. Wainwrights Fac. Engr. and 5-10 other uniformed military. Construction of a bailey bridge was discussed, possibly under Army's Civil Action Program

July 8, 1981 Telecon, DOT&PF with Mary Staley of Senator Steven's office re: Department position

July 14, 1981 Memo, Frechione/Copeland/Smith of DNR to Geoffrey Haynes, DNR Deputy Commissioner re: June 25, 1981 meeting with Army over access restrictions, break in procedure in dealing with military

Summer 1981 DOT&PF receives some legal case history on Virginia case

July 16, 1981 Letter, Lyle Carlson, private attorney to Jeff Haines, DNR Deputy Commissioner, requesting state views of Paul Shultz's complaint

June or July 1981 fact sheet prepared by Capt. Rockwell, Ft. Wainwright describing Armys position on existing right-of-way

August 7, 1981 Letter, Col. Bernard Brown, Army HQ to FNSB Mayor Carlson follow up to June 25, 1981 meeting offering land for bridge site, offering continual temporary access to present property owners but not future purchasers

August 7, 1981 Letter, Richard Lefebvre, DNR Deputy Director to Brig. Gen. Vail requesting meeting to discuss land management issues of mutual interest

August 11, 1981 Letter, Paul Wild/Steve Sisk to Ernest Woods Jr. again requesting response from Corps of Eng.

August 20, 1981 Letter, Ernest Woods Jr. Corps of Engineers to Paul Wild, DOT&PF Right of Way agent advising Woods was forwarding issue to the Army for comment.

Summer 1981 Meeting DNR, DOT&PF, Borough and State Senator Charles Parr re: investigation of bridge alternative. (Note: Apparently there was another unrecorded meeting at which Robert Ward, DOT&PF Commissioner and Henry Springer, DOT&PF Regional Planning Director agreed DOT&PF would perform approach work for temporary bridge per conversation with Steve Sisk)

September 3, 1981 Memo, Frank Mielke, DNR to Mike Whitehead, Office of Governor transmitting draft letter from Gov. to Army along with background summary

September 30, 1981 Letter, Governor Hammond to General Vail seeking compromise, threatening legal action

October 3, 1981 Newspaper editorial urging military compromise

October 6, 1981 Memo, McCaleb, DOT&PF Design Engineer to Springer DOT&PF Regional Planning Director transmitting cost est. for bridge

October 8, 1981 Letter, Henry Springer, DOT&PF Regional Planning Director to FNSB Mayor John Carlson transmitting bridge cost estimates

October 28, 1981 Meeting, arranged by DNR attended by Borough, City, a private property owner, private attorney, 3 reps from DNR, and at least 2 military representatives attempting to resolve issues. Military agreed to grant limited temporary access. DNR used military use permit leverage

November 13, 1981 Meeting record prepared by Frank Mielke, Chief, Land Management, DNR re: October 28 meeting and follow up action

April 1982 State receives copy of legal motion drawn up for Federal court prepared Gary Vancil, attorney for property owners Paul Shultz and John Roberts stating case

May 26, 1982 Letter, Paul Wild, DOT&PF Right of Way Agent to Ernest Woods Jr., Chief Real Estate Div., Army Corps of Engineers re: reminder of request for response

September 2, 1982 Memo, by John Athens for Wilson Condon, State A.G. to Steve Sisk, DOT&PF regional Director re: State's legal position

September 14, 1982 Meeting, DNR Commissioner Datz with Brig. Gen. Vail, Commander 172nd Infantry and others re: military land use and Ft. Wainwright access. Commitments made by both the Army and DNR at this meeting have not been carried out. Memorandum of Record prepared September 15, 1982 by H.A. Frochle, Army Director of Engineering and Housing

September 29, 1982 Rapicom, Scribner to Sisk transmitting Army memorandum of record of September 14, 1982 Katz - Vail meeting

September 30, 1982 Memo, Steve Sisk DOT&PF regional Director to Jon Scribner, DOT&PF Deputy Commissioner of Design & Construction re: summary of Department activity and position on issues

October 1982 Meeting Robert Ward, DOT&PF Commissioner, Jon Scribner, DOT&PF Deputy Commissioner and Steve Sisk, DOT&PF regional Director with Brig. Gen. Vail pledging cooperation; bridge resolution problems surface

November 4, 1982 Memo, McCaleb DOT&PF Design Engineer to Steve Sisk DOT&PF Regional Director re: Nov. 2 meeting at Ft. Wainwright with Post Commander and 7 other Army reps. concerning access options

November 5, 1982 Letter, Dave McCaleb DOT&PF to Frank Colletta Deputy Chief of Maintenance & Operations, Ft. Wainwright transmitting meeting record.

November 5, 1982 Letter, Stan Leaphart, Citizen's Advisory Commission to Robert Price, Assistant A.G. re: State's legal position

November 8, 1982 Letter, Robin Foster, Citizen's Advisory Council to Brig. Gen. Vail, Commander, 172nd Infantry requesting Army assistance in resolving issue.

November 17, 1982 Letter, Ernest Woods Jr., Chief, Real Estate Div. Corps of Engineers to Steve Sisk, DOT&PF, re: Army's legal position desire to cooperate

November 22, 1982 Letter, Wilson Condon, State A.G. to Robin Foster, Citizen's Advisory Council re: status, need for research

January 14, 1983 Intra-office note, Sen. Steven's office noting call from Shultz on January 13, 1983

February 1, 1983 Note, Marlene Neve, Fairbanks Governor's Office to DOT&PF Commissioner Casey, forwarding information at Shultz's request.

February 2, 1983 Letter, Col. Lewis Driver, Commander Ft. Wainwright to Paul Shultz, property owner re: Army position

February 3, 1983 Letter, Paul Shultz to DOT&PF Commissioner Casey requesting meeting and assistance

February 23, 1983 Letter, Stan Leaphart, Citizen's Advisory Commission on Federal Areas to DOT&PF Commissioner Casey re: Shultz access complaint

March 18, 1983 Memo, Jon Scribner, DOT&PF to Steve Sisk, DOT&PF re: response to Shultz

April 13, 1983 A.G. opinion, Norman Gorsuch, State Attorney General to Steve Sisk, DOT&PF re: Ft. Wainwright roads

July 25, 1983 Telecon, John Martin DOT&PF and Paul Shultz, property owner re: status

August 12, 1983 Janice Wagner, DOT&PF prepares draft overview report

September 29, 1983 Telecon, Leeta Kaye and John Martin, DOT&PF re: status of issue, offer of assistance

October 20, 1983 Letter, Rep. Bettisworth to DOT&PF Deputy Comm. Glenzer re: DOT&PF position, requests assistance in resolution.

November 2, 1983 Letter, Maj. Gen. Gordon Austin (ret.) former Commander Ladd AFB to Bettisworth re: former access status

November 3, 1983 Meeting, John Martin and Glen Glenzer, DOT&PF re: Ft. Wainwright Access strategies.

November 4, 1983 Letter, John Martin, DOT&PF to USAF re: assistance in locating Maj. Gen. Gordon Austin (ret.), Ladd AFB former Commander

November 4, 1983 Letter, Glenzer, DOT&PF to Rep. Bettisworth re: DOT&PF action, requesting strategy meeting

November 15, 1983 Letter, USAF personnel center to John Martin, DOT&PF re: location Maj. Gen Austin (ret.)

November 15, 1983 Meeting, John Martin and Janice Wagner, DOT&PF at FNSB with Richard Spitler re: coordinating action

November 16, 1983 Telecon, John Martin, DOT&PF and Mary Lou, Senator Steven's office re: Steven's position

November 17, 1983 Telecon, John Martin, DOT&PF and Maj. Gen. Gordon Austin, former Ladd AFB Commander re: former access status

November 18, 1983 Meeting, John Martin, DOT&PF, at Ft. Wainwright with Col. Lewis Driver, Post Commander and 4 other Army reps. re: Army position

November 21, 1983 Letter, Mayor Allen to Glenzer requesting coordinated effort.

December 2, 1983 Telecon, John Martin and Paul Shultz, property owner re: status of resolution

December 5, 1983 Telecon, John Martin, DOT&PF and Maj. Shelton, Ft. Wainwright re: bridge construction.

December 9, 1983 Telecon, Bill McMullen, DOT&PF and Mayor Allen, FNSB regarding issue.

December 20, 1983 Meeting, Bill McMullen, DOT&PF Acting Deputy Commissioner with Rep. Bettisworth, FNSB Mayor Bill Allen, Richard Spitler, FNSB Planning Director and Leeta Kaye re: options for issue resolutions.

December 20, 1983 Meeting, Acting DOT&PF Commissioner Glenzer and State Rep. Bob Bettisworth to discuss issue.

December 21, 1983 Memo, Danny Johnson, DOT&PF to Steve Sisk, DOT&PF regarding construction cost of alternatives

Other information in the files includes substantial documentation of the history of the access in question gathered and provided by Paul Shultz.

Missing from the file is a reputed announcement published in the News-Miner by the Army in 1981 stating future access through Ft. Wainwright would be limited and specifically mentioning the Potlatch Ponds Disposal Area.

MEMORANDUM

LISTING OF DOT&PF DOCUMENTATION

PENDIX E

TO: Charles S. Matlock, Director
Highway Design and Construction
Juneau

DATE: June 17, 1981

FILE NO: 246I-2900

TELEPHONE NO: 452-1911, ext. 222

FROM: *SS/AM*
Stephen C. Sisk
Acting Interior Regional Engineer
Highway Design and Construction
Fairbanks

SUBJECT: Lazelle Road and Trainor
Gate Road - River Road

As requested, we are enclosing copies of the following documentation regarding the closing of the above-referenced roads:

- Letter of 6/5/81 to Ernest L. Woods from Paul J. Wild
- Letter of 6/12/81 to Paul J. Wild from Ernest L. Woods
- News clipping of 6/15/81

We are sending to the Corps of Engineers copies of the following maps and documents dating back as far as 1914 which indicate that Lazelle Road and Trainor Gate Road - River Road are part of the public road system.

- 5 maps and plats
- Department of the Interior General Land Office correspondence
- Department of the Interior Alaska Road Commission correspondence

~~See~~ Chapter 320, Congressional Session Laws, 6/30/32 (copy)

- Public Land Orders and condemnation documents relating to Ladd Air Force Base

PMV
SCS/PJW/skh

Enclosures: as stated

Telephone/Conference Data

Date: 2-9-84 Re: St. Wainwright Accus

People Involved: Bill McMullen.

Topics: Relayed discussion with Mayor Allen. ~~and~~
Bill said that the "ball was in his court" and
that he would arrange a meeting with Gen. Betts
~~with~~ for himself and Glen. He would also be working on
a negotiating strategy and contact us for any support.

Response/Follow-up:

Signed By: JM

Copies To:

Telephone/Conference Data

Date: 2-7-84 Re: St Wainwright Access

People Involved: Mayor Bill Allen

Topics: In response to a call from John Horn who received a call from Mayor Allen, I called Mayor Allen.

He is accepting our offer to negotiate with the Army. His offer to litigate still stands. He is willing to be at the negotiations, if we think that is advisable. He wants to be the single point contact on this issue for the FWSR.

Response/Follow-up:

Signed By: *jm*

Copies To:

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

30FW file

TO: FILE

FROM: Barbara Shepherd *cf*
Planner
Area & Local Planning
Northern Region

DATE: December 11, 1984

FILE NO: 300N / 30FW

TELEPHONE NO: 479-4281

SUBJECT: Public Meeting
Ft. Wainwright Access

On December 5, 1984, DOT&PF held a public meeting at Birch School on Ft. Wainwright. Approximately 30 people attended. The purpose of the meeting was to determine public sentiment regarding access to private property east of Ft. Wainwright. Presently this property is reached by restricted road access through Ft. Wainwright military base.

John Martin, DOT&PF, outlined the history of access problems and then identified options for access. These options were divided into three categories: a. continue restricted access, b. unrestricted access provided on existing rights-of-way, and c. unrestricted access provided by construction of new rights-of-way, bypassing the military base.

1. Continue Restricted Access:

Public Comment

This option would maintain the existing restricted access. Passes would continue to be required.

- Property owners and their guests are subject to regular search procedure and vehicle checks. Some object to the spot check procedure that the military uses. The general feeling was that either every car entering Fort Wainwright should be checked, or no vehicle should be subject to the search procedure.
- The military is inconsistent in applying restrictions and rules regarding access through the base. The rules change with base command.
- Current policy is a form of discrimination because it makes development difficult.
- At rush hours the traffic at the Gaffney entrance is backed up toushman Street because of the military policy of checking vehicles before they are allowed to enter Fort Wainwright. This also contributes to air pollution build-up. Traffic and pollution problems will worsen when 3000 more troops move into the area.
- When the military gates need to be opened to let in property owners with special loads/deliveries, there are sometimes delays due to the military bureaucracy which can be costly in time and money (when rented equipment is involved). One person said that his recent experience with the military had been good, but in the past delays were common.

2. Unrestricted Access via Existing Rights-of-Way:

The three routes described were:

- A. Lazelle Road - This road starts at the Steese Highway in the vicinity of Seekins Ford, then follows the base of Birch Hill to Sage Hill and the private property.
- B. Old River Road - This road starts at Trainor Gate and generally follows the river to Approach Hill and the private property.
- C. Montgomery Road/Golf Course - This road starts at Badger Road gate, goes through the golf course, crosses the river west of Approach Hill and then connects to Old River Road.

Public Comment:

- Use of the Old River Road would be a good compromise until other access could be made available. This option would be low cost as well.
- It was felt that Trainor Gate Road should not be considered because of increased congestion at the Steese Expressway.
- Trainor Gate access would be more efficient than an access point on the east side of the base (e.g., the distance from one man's property to town via Trainor Gate would be 5.8 miles, whereas via a Nordale connection the distance to town would be 23 miles).
- DOT&PF cited the problems of using Trainor Gate as a free access route. The military sees open access as a security problem. Alternatively, if the road were fenced, north/south military movement would be hampered.
- One person felt restricted access was the military's problem and they should be the one to come up with a solution.
- Of the existing right-of-way alternatives, Montgomery Road would be the shortest and cheapest. The bridge is limited to 5 tons, but carried more during the pipeline. This restriction should be changed so public doesn't have to cross illegally or have Trainor Gate opened.
- Martin Gutoski, FNSB, said that Borough standards probably would require that a new two-lane bridge be built.
- One person suggested that the military bridge could be moved downstream. DOT&PF said they would make note of the suggestion, but reconstruction would have few cost advantages in comparison to other options. Such a move requires new piers and abutments which are a substantial part of the cost of a new bridge

3. New Construction:

Access provided by new road construction was discussed. The three options included: a. bridge the Chena River (\$3.3 million), b. a road connection to Chena Hot Springs Road (\$825,000), and c. a road connection to Nordale Road (\$550,000).

Public Comments:

- One person felt option (b) would increase congestion and traffic safety problems on Chena Hot Springs Road, especially for school buses. Another person felt there would be similar traffic problems on Badger Road if option (a) were pursued, coupled with the problem of ice fog on the Richardson Highway. Option (a), however, would be a shorter route.
- Residents were concerned with the quality of new road construction. They did not want to drive on roads of lesser quality than their existing roads. If the State builds a new road, it will be built to State standards. DOT&PF is not responsible for the construction of local subdivision roads.
- Someone asked if DOT&PF had sought any appropriation yet. Martin said no, and explained that DOT&PF must first know what the majority of people want. At that point, an appropriation can be requested, but must then compete against many other projects. State policy is to first commit monies to the existing system, rather than new projects.

After the discussion of identified alternatives, there was a poll vote taken to determine which alternative or combination of alternatives was desired. Following are the results of the vote:

1. Continue restricted access through Fort Wainwright: yes-2, no-16.
2. Unrestricted free access via existing right-of-way:
 - 2A - from Steese Expressway - 4
 - 2B - from Trainor Gate Road - 1
 - 2A & 2B combination - 14
 - 2C - from Montgomery Road - 0

There was one person that didn't agree with any of the 6 alternatives that would use existing rights-of-way. John Martin asked, "Why does 2A & 2B (combination) appeal to most?" Residents responded that they would prefer a route that would begin in the area of Seekins Ford and continue southeast to the old River Road. Residents stated that traffic congestion would decrease with the combination of alternatives 2A & 2B.

In a separate poll, alternatives 2A & 2B & 3C were considered. This combination of alternatives would create a route from Seekins Ford to Nordale Road. There were 19 people in favor of this combination.

3. Construct new alternate access around the military reservation:

- 3A - bridge the Chena River - 6
- 3B - from Chena Hot Springs Road - 0
- 3C - from Nordale Road - 1

There were 11 people that didn't agree with any of the above alternatives. John Martin asked, "If there were no other options except 3A, 3B or 3C how would you vote."

- 3A - 19
- 3B - 0
- 3C - 1

There was one person that didn't agree with any of the three alternatives.

General Concerns

- It was stated by one of the residents that the military is opposed to subdivision/development. The military responded by saying that they don't oppose subdivision/development, but that they are concerned about development near the airstrip. Because of noise caused by aircraft, the military may oppose development for that reason.
- There was a general feeling that since there are existing rights-of-way on Fort Wainwright, the public has the right to use them and shouldn't be hindered by the military.
- Military's position on alternatives. (Military officials) stated that they came to be silent and that the group here tonight cannot speak for the army. They said that they were present just to gather information.

Of the people present, 16 own property in the area east of Fort Wainwright, 6 are area residents, and 6 people visit in that area.

The meeting ended at 8:55 p.m.

Comments Received from People Attending the Meeting:

Citizens Advisory Committee on Federal Areas: Requested copy of issue analysis and list of attending public.

"I hope the military will reevaluate the problems and consider that there has to be a large step forward towards greater freedom of access economies, lesser of several evils access distance be considerably modified. We need the military, but they also need us."

"It seems as though, considering the rapid growth in the area now, a route from Steese through to Nordale would serve to address a long-term need."

"Route 2A or a combination of 2A and 2B is by far the best alternatives. It would provide the most direct access and cost would be lower because there is already a road. I recognize the traffic congestion at Trainor Gate Road."

"Open Trainor Gate."

"Informative - would like to incorporate 3A, 2B, and 2A."

"We are interested in the 2A (Seekins) combined with 2B and the road continuing Nordale Road."

"Our property lies north of the line about 2 to 3 miles west of Nordale Road. Access off Nordale Road seems best to us. The military must be able to control their property. Access should be on public land not on military property."

"Platting section would like to be kept abreast."

"My interest is to see a through road connecting Steese, along Lazelle Road then lands to Nordale Road north of river. Also to release traffic in Chena Hot Springs Road, population and traffic will increase with access. Development in this area has been retarded by Wainwright blockade."

"Meeting was informative."

BSS/crm

Telephone/Conference Data

Ft. Wainwright Access Control

Date: *1/11/84* Re: *Chena River Crossing at Badger Rd (Dennis)*

People Involved: *Mike Bennett - 488-9090*

Topics: *Military had a sign up at this location saying "Do not dredge..."
It has been covered by one saying
"\$3.2 million bridge coming
Spring of 1984
Your tax dollars at work"*

*Told him we had no plans for a bridge in the
immediate future*

He mentioned it was across from what is Paul Skulte property

Response/Follow-up:

Signed By: *Charity Kelly*

Copies To: *John Martin*



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, CORPS OF ENGINEERS
P.O. BOX 7002
ANCHORAGE, ALASKA 99510

REPLY TO
ATTENTION OF:

NPARE-MD

17 November 1982

*file
180.3*

Mr. Stephen C. Sisk
Director, Design and
Construction
Department of Transportation
and Public Facilities
State of Alaska
2301 Peger Road
Fairbanks, AK 99701

Dear Mr. Sisk:

This responds to your request for Army comments on the documents submitted by the State of Alaska in support of its position that certain roads crossing Fort Wainwright are public roads.

The legal issues regarding the status of Lazelle and Trainor Gate Roads have been discussed exhaustively in the past 14 months. It is my understanding that representatives from your office attended meetings held at Fort Wainwright on 25 June 1981 and 28 October 1981. At the 28 October 1981 meeting, attorneys representing the State of Alaska, the City of Fairbanks, and the U.S. Army were afforded an opportunity to state their respective positions. A written legal memorandum prepared by Army attorneys was presented and discussed at the meeting (Incl 1).

The parties were unable to reach an agreement concerning the legal status of these roads. The parties did negotiate a temporary solution whereby the Army would continue to allow access through Fort Wainwright to property owners who had no other means of access, provided the State would proceed to obtain a legislative appropriation to provide an alternative means of access. We had assumed that such State action was progressing satisfactorily. The interests of all would be best served if the State of Alaska were to expedite its efforts to provide an alternative means of access to the property in question.

To this end, the Army has actively discussed this problem with the State of Alaska, Department of Natural Resources, and with the Fairbanks North Star Borough and has tentatively approved an alternate right-of-way location.

NPARE-MD
Mr. Stephen C. Sisk

17 November 1982

The Army has agreed to the current arrangement as an interim measure to allow the State reasonable time to provide alternative means of access. We would emphasize that this interim measure, quite apart from the legal considerations of who owns the roads, is not a long-term solution. It is an arrangement which is less than satisfactory to all parties concerned.

While the Army's position in the matter of the legal status of Lazelle and Trainor Gate Roads has not changed, the Army does desire to cooperate and assist the State in resolving this issue as expeditiously as possible.

Sincerely,

SIGNED

ERNEST L. WOODS, JR.
Chief, Real Estate Division

1 Incl
As stated

CF:

✓ Mr. Frank G. Mielke
Chief, Land Management
Division of Forest, Land, and
Water Management
Department of Natural Resources
State of Alaska
555 Cordova Street
Pouch 7-005
Anchorage, AK 99510 w/incl

The Honorable John A. Carlson
Mayor, Fairbanks North Star Borough
P.O. Box 1263
Fairbanks, AK 99701 w/incl

FACTS

In 1905, the U.S. Congress established the Alaska Road Commission to supervise the planning, construction and maintenance of roads, highways and trails in the Territory of Alaska. Revenues collected from liquor, occupation and trade licenses issued outside the incorporated towns of the Territory were deposited in an "Alaska Fund" and a portion thereof was used to finance Alaska Road Commission projects. The Road Commission operated under the auspices of the War Department until 1932 when supervisory responsibility was transferred to the U.S. Department of Interior. The Road Commission was required to file yearly progress reports and those reports, provided by the Alaska District, U.S. Army Corps of Engineers, provides the basis for examining the development of Lazelle Road and serves to substantiate the Government's position that Lazelle Road, in its present configuration, is not a public roadway. (Appendix I)

The Road Commission report for 1912 shows the planned development of a trail connecting Fairbanks to the Chena Hot Springs. This trail, designated as Rt 7J originally ran a distance of approximately 100 miles. In 1913, a shorter trail was planned and developed. In 1914, due to a loss of local road tax funds, there were limited improvements to the trail. In 1924, the site for the Chena Hot Springs trail was changed and the 2 1/4 miles of previously constructed wagon road on the old Chena Hot Springs trail was given an independent designation of Rt 7CA (Lazelle Road). Lazelle Road is described as branching off from Rt 7G, (the Fairbanks-Silmore trail), approximately three (3) miles north of Fairbanks and extending 2 1/4 miles to the Lazelle Farm located in the NE 1/4, Section 6, T.1.E.R.1.E. Road Commission reports for 1942 show that Lazelle Road had been lengthened to four miles. Apparently, its sole purpose was to serve homesteaders located along its route. Records up to 1947 fail to show that it connected with any other roads. A map (Appendix II) which is of an unknown date, which shows a "Fairbanks-Smallwood Rd", running along what is now the River Road and portion of the present incarnation of Lazelle Road. Review of pertinent land records fails to show any reference to or description of a "Fairbanks-Smallwood Rd" after 1913. It is opined that this map reflects a proposed road as opposed to a constructed road or in the alternative, a trail. Records indicate that a road may have been planned along the River Road route, in that easements were reserved. However, Alaska Road Commission documents up to 1942 fail to show a road along this route.

The 1941-42 expansion of Lazelle Road was done at the request of homesteaders residing in the area. The expansion was accomplished by means of pre-existing road easements contained in previously issued homestead applications as well as by outright purchase of road easements. On August 9, 1940, Henry Warren conveyed a road easement through his homestead found in the N 1/2, NW 1/4, Section 5, T.I.S.R.I.E. The easement deed provided that the easement would revert to the owner of the surrounding land when and if it was no longer used or needed as a public roadway. Mr. Warren's land was acquired by the U.S. Government by condemnation in 1945. On August 9, 1940, the U.S. Government acquired a road easement from John T. Adams through his property located in the N 1/2, NE 1/4, Section 5 and NW 1/4, Section 4, T.I.S.R.I.E. The easement deed contained a reversionary interest similar to Mr. Warren's. On June 5, 1943, the Estate of John T. Adams conveyed the above described property to the U.S. Government. Previous homestead applications contained similar reversionary interests. (Appendix III)

All of the land acquired by the U.S. Government was taken subject to existing easements for roads...etc. At Appendix IV is a 1947 Fairbanks School District Map which shows Lazelle Road running through T.I.S.R.I.W., Section 1 and T.I.S.R.I.E., Sections 6, 5 and terminating immediately inside the western boundary line of Section 4. As of this date, Lazelle Road was apparently used to reach homesteads located on the northeastern boundary of Ladd Army Airfield. By 1953, the boundaries of Ladd Army Airfield had expanded and included the terminus of Lazelle as well as the other homesteads in the area. This expansion was accomplished through Public Land Orders, condemnation and purchase between 1947 and 1953. There is no evidence that Lazelle Road was used as a public road after the U.S. Government acquired T.I.S.R.I.E., Section 4, W 1/2 Section 3 and W 1/2 Section 9. Maps from as early as 1942 indicate that this area was to be used for petroleum and munitions storage. These facilities were built after the Government acquired ownership of the land.

Per Frank Colvita, Chief, Fort Wainwright Facilities Engineer, Roads and Grounds Department, there has been no state maintenance of Lazelle Road, in either past or present configurations, since the Government expanded Ladd Army Airfield to include the land through which Lazelle Road runs. In addition, there is no evidence that the Alaska Road Commission was involved with Lazelle Road after 1950.

Facilities Engineer maps dating to 1942 show that the route and length of the Lazelle Road originally developed and maintained by the Alaska Road Commission has changed considerably since the Government acquired ownership of the abutting fees. In 1954, construction of a Petroleum Storage Facility located in T.I.S.R.I.W, Section 1 was completed. A portion of this facility appears to have been built directly on what had formerly been Lazelle Road and is located at the point where Lazelle Road intersects with the northwestern boundary of Fort Wainwright. In approximately 1956, a fence was constructed around the facility effectively terminating any public access. The original route of Lazelle is no longer traversable even with access through the petroleum storage facilities.

Development plans for Ladd Army Airfield show that the Trainor Gate and River Roads were constructed by the military as part of the Petroleum and Munitions Storage Complex. Trainor Gate and the adjoining access road were constructed to provide the military with a direct route to the petroleum storage facilities located in Section 1. These roads have been maintained exclusively by the Government since construction. River Road, formerly Birch Hill Access Road, was built for the same reason and has also been maintained exclusively by the military. Thus, it is apparent that the military has had the exclusive responsibility since 1953 for the maintenance and construction of the road system located in the northern portion of the installation. Further, given the construction of POL facilities on Lazelle, the abandonment of the original route of Lazelle Road and the incorporation of the remaining portions of Lazelle Road into the Petroleum and Munitions Storage Complex; it may be argued that, since at least 1953, Lazelle Road has not been a public road. In addition, given the reversionary interests of easements conveyed to or retained by the Government, the military's acquisition of the servient fees and the non-use of Lazelle Road for nearly 30 years, an argument can be made that the easement was extinguished and merged with the servient fee.

Given the above facts, it may be stated that the military maintained, constructed and controlled the road system located in the northern area of Fort Wainwright since 1953.

The above notwithstanding, there is additional evidence that Lazelle Road, River Road and Trainor Gate Road were never part of the state public highway system.

Public Law 86-70, The Alaska Omnibus Act, provided for the amendment of certain federal law in light of Alaska's admission into the Union. Section 21 (a) of Act provides, in pertinent part that:

"The Secretary of Commerce shall transfer to the State of Alaska by appropriate conveyance without compensation:...all lands or interests or interests in lands...pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska

(ii) except such lands or interests in lands as he or the head of any other Federal agency may determine are needed for continued retention in Federal ownership for purposes other than or in addition to road purposes."

Subsection C(1) further provides that:

"The State of Alaska shall be responsible for the maintenance of roads...transferred to it under subsection (a) of this Section, as long as any such road is needed for highway purposes."

Per quitclaim deed from the Secretary of Commerce to the State of Alaska, in accordance with Section 21 (a) above, Alaska highways were conveyed to the State of Alaska. The quitclaim deed, found at Appendix V, lists the highways and roads which were conveyed to the State of Alaska. Lazelle Road is not contained in this conveyance. Of further note is the fact that no roads which run through or into Fort Wainwright, aside from the Richardson Highway, were conveyed to the State. In point of fact, the precursor of Trainor Gate Road, FAS Route 624, is specifically described as running to the west boundary of Ladd Army Airfield. The present day western boundary of Fort Wainwright conforms to the 1959 boundary of Ladd Army Airfield.

MEMORANDUM

State of Alaska

TO: JW Sedwick

DATE: 9-13-82

FILE NO: 1450

TELEPHONE NO:

FROM: Frank Mielle

SUBJECT: Military Relations with DNR

My involvement in the above referenced subject began in the Fall of 1980, shortly after the Memorandum of Agreement (copy attached) was signed. Pursuant to the agreement, DNR was to compile a list of requests for uses of military land. That was done, but the military response to those requests was fairly token.

Summer of 1981

The next involvement came shortly after the military designated Ft. Wainwright as a closed installation. This meant that civilians living beyond Ft. Wainwright had to get passes to get to their homes. Some people trying to build on land that was formerly accessible were being denied access. I am told this action was attributed directly to General Vail. The controversy became very active, and a meeting was held with the military, DCTPF, DNR (represented by Jeff Haynes, myself and NCDO) and the AG's Office. At that time Jeff said we would have to take a hard look at military requests for state land, if civilians were being denied access. Shortly thereafter, another meeting was held, prompted by a letter from Gov. Hammond to Gen. Vail, to discuss the access problem. Basically, it was agreed that persons residing in the area beyond the post would

fall of 1981

be issued access permits, as well as an unspecified number of people desiring to build homes there. It was decided to grant permits for use of the Gulkana Glacier for a length of time similar to that of the access permits granted by the military. A permit was granted, prior to the holding of a public hearing as required by the MOA, for 30 days. The hearing requirement was not essential prior to the permit, as hearings were to be held on an annual basis, and a hearing was held within one year of the agreement, ~~and~~

During the winter of 1981-1982, ~~other~~ requests for state land were made. A water use permit was granted, being determined to be consistent with the terms of the MOA. ~~Another~~ permit was granted, subject to the hearing requirement (see memo).

More recently, ~~another~~ permit was granted for a permit to be given for an extended period covering the Gulkana Glacier area, and this was done. Another permit was granted, without a public hearing, on the basis that it was for testing of equipment, rather than training (w/

the approval of the Commissioner's Office).

The military did hold a hearing on the BRIMFROST '83 maneuvers (9/8/82), and the request from the military is being processed by NCDO.

The military did fly me up to the Gullkama Glacier for an inspection of the training area. The grounds are well policed, without much of a trace of use by the military.

DNR and the Corps of Engineers are working well together without any real problems.

I see no reason why the military could not be granted a long term use permit for the area. The area is well policed and the military is well equipped to handle the area.

Delta Junction Office
Nistler Building
Delta Junction, Ak. 99737
Telephone: 895-4449

Forest, and Water Rights
JUL 30 1981
LAW OFFICES OF
LYLE R. CARLSON Director's Office

Room 206, NBA Bldg.
7th and Cushman
Fairbanks, Alaska 99701
Telephone: 452-3498

Post Office Box 2741
Fairbanks, Alaska 99707

July 16, 1981

Mr. Jeff Haines
Deputy Commissioner
Dept. Natural Resources
Pouch M
Juneau, Ak. 99811

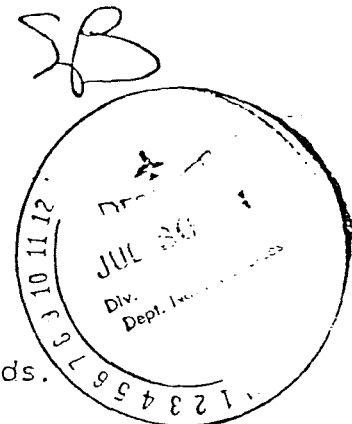
RE: Dispute with U.S. Army regarding closure of local roads.

Dear Jeff:

I'm sorry I missed your call which you made when you were in Fairbanks during the past few weeks. At the time I was out of town and I did not return until several days later. It is my understanding you called me about the present dispute between the State of Alaska and the U.S. Army with respect to the military's rather intransigent policy of refusing to permit reasonable access into the area north of Fort Wainwright.

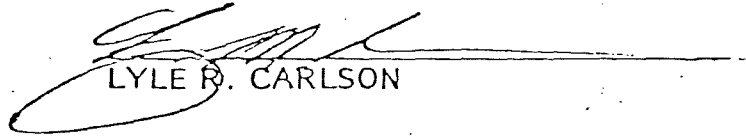
During the past year or so I have been working with my client, Paul Schultz, with respect to this problem. I am presently in the process of drafting a complaint against the U.S. Army as both Paul and myself both feel that they have not been realistic in evaluating their exposure based on what appears to be illegal closure of public roads. I can certainly understand why the Army closed Lasalle Road as closure occurred soon after the commencement of W.W.II and the needs for strong security were compelling. We have examined all of the documents which apparently are available which set out the rights of the Army and the extent of the property required by the Army as to the area in question and we find no instance where the Army legally terminated existing public roads. Obviously, the public did 'discontinue' the use of some public roads in that area but that discontinuance occurred because the Army gave the public no choice - namely, the roads were blocked off. Therefore, it would appear that 'abandonment' should not be a serious issue.

I would appreciate your views and ideas with respect to the drafting and presentation of a complaint and - hopefully - this is a case which the State would actively pursue based on the State's interest in the entire area. As you know the Army has continued to deny access to many individuals in this community and you have probably been advised that a number of local residents are currently unhappy with the recent actions taken by the Army.



I anxiously await your response.

Sincerely,



LYLE R. CARLSON

LRC/bc
cc: Paul Shultz.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND & WATER MANAGEMENT

State of Alaska

TO: Jeff Haynes
Deputy Commissioner, DNR

DATE: November 18, 1981

FILE NO: 1450

TELEPHONE NO: 276-5326

FROM: Frank G. Mielke, Chief *Frank Mielke*
Land Management

SUBJECT: Military Meeting Memo

I would like to send a copy of this memo to Sen. Stevens. The correspondence I've seen from Stevens indicates that the State is taking care of the problem. Additionally, I got a call from a person in Fairbanks yesterday who wrote Steven's office on a related problem that the State has not been working on, and the Senator said that we were.

I'd like to send this on so it must be understood exactly what DNR is working on with the military.

JK
JH

180.3

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF LAND AND WATER MANAGEMENT

TO: See Distribution List

DATE: November 13, 1981

FILE NO: 1450

TELEPHONE NO: 276-2653

FROM: Frank G. Mielke, Chief
Land Management



SUBJECT: October 28 Meeting With
Military

At the request of DNR, a meeting was held with the military on October 28, 1981, at Fort Wainwright to discuss public access across Fort Wainwright. Present were Jim Nordale, FNSB Attorney, Ron Smith, Fairbanks City Attorney, Vern Carlson, Gary Vancil, Attorney, Chris Guinn and Don Parks, NCDO, Ernie Woods, Corps of Engineers, Lt. Colonel Lehman, JAG, 172d Infantry, various Fort Wainwright military officers and myself. The purpose of the meeting was to discuss the legal issues involved in determining the right of the public to access across Fort Wainwright to private and State land having no other constructed access.

Captain Rockwell, JAG, Fort Wainwright, explained the history of the roads constructed by the Alaska Road Commission, and the acquisition of land by the military for the establishment and expansion of Fort Wainwright. In explaining the military's legal position, differences in the interpretation of the law concerning public access easements became apparent:

1. The military took the position that a road constructed by the ARC gave the right of access only to homesteaders who lived in the area and not the general public;
2. That by constructing a facility on Fort Wainwright which blocked off a road constructed by the ARC, the military had "vacated" the public right of access; and
3. That the Quitclaim Deed, issued by the Secretary of Commerce, pursuant to the Alaska Statehood Omnibus Act, was the sole means of dedicating, reserving, or conveying public access in Alaska.

Reaching an impasse in the discussion of the legal issues, the discussion turned to ways of negotiating a temporary solution. Basically, it was agreed that the military would allow access, by means of a 6-month temporary pass, to all persons residing in areas accessed only by Fort Wainwright roads, so long as the State proceeded to obtain a legislative appropriation for road and bridge construction, and if obtained, proceeded with construction. Additionally, it was tentatively agreed to grant such temporary access to another 8-15 parties, subject to approval by the Post Commander and Commanding General.

In a subsequent telephone conversation, Lt. Colonel Lehman informed me that the Fairbanks North Star Borough had expressed some concern over the development of these areas and desired to have input on the granting of access permits. Therefore, no number of additional permits would be stated, but each would be reviewed on a case-by-case basis. I informed Lt. Colonel Lehman that it would likewise be recommended that the State policy for granting letters of nonobjection and permits for the military use of State and State-selected land would be reviewed on a case-by-case basis, and would be granted for shorter periods of time than requested, to insure that the public may be granted reasonable access.

180-3

November 13, 1981

An extension was given for a temporary use permit covering military training exercises on the Gulkana Glacier, effective October 30, 1981, for a 30-day period rather than the requested 120-day period.

cc: Jeff Haynes, Deputy Commissioner, DNR
Senator Charlie Parr, Fairbanks
Lt. Colonel Lehman, JAG, 172d Infantry
John Carlson, Mayor, FNSB
Bill Copeland, NCDO
Heinrich Springer, DOT, Fairbanks
Mike Whitehead, Governor's Office, Juneau
Phil Deisher, Governor's Office, Fairbanks
Larry Wood, AGO, Fairbanks
Ernie Woods, Corps of Engineers
Gary Vancil, Fairbanks
Senator Ted Stevens

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J. KEITH KENNEDY, STAFF DIRECTOR

THOMAS L. VAN DER VOORT, MINORITY STAFF DIRECTOR

Tom Mielke
United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

RECEIVED
NOV 27 1981

GOVERNOR'S OFFICE

October 27, 1981

Mielke
FOREST LAND & WILDLIFE MANAGEMENT

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99801

Dear Jay:

Thanks for providing me with a copy of your letter to General Vail concerning the need for meetings about the Ft. Wainwright access question. As you know, my office has been discussing this issue with General Vail and his staff since early in the summer. It is my understanding that General Vail has responded to your letter and offered to set up meetings in hopes of solving the problem.

I have written to General Vail urging him to work closely with you and your staff to resolve this issue. I think that there is an opportunity here for the Army and the civilian community to come to an amiable resolution of this problem. If there is anything I can do to be of assistance, please let me know.

With best wishes,

Cordially,

TS
TED STEVENS

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND & WATER MANAGEMENT

State of Alaska

TO: Larry Wood
Assistant Attorney General, Fairbanks

DATE: November 5, 1981

FILE NO: 1450

TELEPHONE NO: 276-2653

FROM: *FGM*
Frank G. Mielke, Chief
Land Management

SUBJECT: Ft. Wainwright Public/Access

Please accept my apology for not picking up your letter to Col. Lehman for the October 28, 1981, meeting with the military. Somehow it slipped my mind.

After discussing the legal issues, there appeared to be differences in the respective opinions of the Military and non-military, and the discussion turned to working out a compromise. A tentative agreement, subject to approval by the Post Commander and Commanding General, that the military would grant 6 month permits to the 9 families already living on the other side of the Post, and an additional 15 parties who desire to build in that area, so long as the State continued to seek funding for an access road and bridge across the Chena River, and proceeded with construction after funds were granted.

The statement on the legal issue was not in written form. Gary Vancil requested that. Some of the statements seemed without much legal basis, for example: (1) that a road or trail, constructed by the Alaska Road Commission provided legal access only to the homesteaders who lived at the end of the road, and not the general public; (2) that the Quitclaim deed issued by the Secretary of Commerce under the Alaska Omnibus Act was intended to be the exclusive means of granting public access on federal lands in Alaska. I'm not sure that they will commit their analysis to writing.

I'm sorry that the meeting was scheduled so inconveniently for you, but things just about could not be done otherwise. I'll be sure to inform you of further developments.

1450-3

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND & WATER MANAGEMENT

State of Alaska

TO SEE DISTRIBUTION LIST

DATE: October 12, 1981

FILE NO: 1450

TELEPHONE NO: 276-2653 ex. 299

FGM
FROM: Frank G. Mielke, Chief
Land Management

SUBJECT: Meeting on Access to
Ft. Wainwright

Attached is a letter from Lt. Col. Lehman, of the 172nd Infantry, concerning a meeting to discuss the issue of public access to Ft. Wainwright.

As the letter notes, attendance is to be limited to attorneys, as the issue is one of legal access, and their clients.

Please contact me if you have any further questions.

cc: Larry Wood, AGO Fairbanks
John Athens, Transportation Section, AGO
Bill Copeland, NCDO
Dick LeFebvre, DFLWM
Mike Whitehead, Office of the Governor
Jeff Haynes, Deputy Commissioner

180-3

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

JAY S. HAMMOND, GOVERNOR

555 Cordova Street
Pouch 7-005
ANCHORAGE, ALASKA
PHONE: 1907/276-2653

OCTOBER 12, 1982

BRIG. GENERAL NATHAN VAIL
COMMANDING GENERAL
172ND INFANTRY BRIGADE
FORT RICHARDSON, ALASKA 99505

RE: ACCESS ROUTE AND BRIDGE CONSTRUCTION TO ACCESS STATE LAND,
FT. WAINWRIGHT

DEAR GENERAL,

PURSUANT TO OUR MEETING OF SEPTEMBER 14, 1982, THE DEPARTMENT OF
NATURAL RESOURCES HEREBY REQUESTS THE FOLLOWING:

1. AN ACCESS ROUTE ON FT. WAINWRIGHT, ON THE EASTERN PORTION OF
THE MILITARY RESREVIATION, IN THE AREA OF SECTIONS 15 AND 16,
TOWNSHIP 1 SOUTH, RANGE 1 EAST, FAIRBANKS MERIDIAN.
2. INSTALLATION AND USE OF ON TEMPORARY BASIS, A BAILY BRIDGE,
AND NECESSARY MATERIAL TO BE INSTALLED AS A TRAINING EXERCISE
BY ENGINEERING TROOPS. THIS REQUEST IS CONTINGENT ON THE
INSTALLATION BY THE STATE OF ALASKA OF TWO SETS OF PILING.
3. MATERIAL FOR AND CONSTRUCTION OF A ROADWAY TO THE ABOVE
REFERENCED BRIDGE.

THIS ACCESS ROUTE AND BRIDGE CONSTRUCTION IS ALLIED FOR
PUBLIC ACCESS TO STATE LANDS AND OTHER PRIVATE LANDS WHICH AT
PRESENT ARE ACCESSED ONLY THROUGH FT. WAINWRIGHT.

SINCERELY,

JOHN KATZ
COMMISSIONER

CC: ROBERT WARD, COMMISSIONER
DEPT. TRANS. & PUB. FACILITIES

180.3

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND & WATER MANAGEMENT

State of Alaska

TO: Jeff Haynes, Deputy Commissioner

DATE: October 12, 1981

FILE NO: 1450

TELEPHONE NO: 276-2653 ex. 299

FHM
FROM: Frank G. Mielke, Chief
Land Management

SUBJECT: Meeting on Public access
to Ft. Wainwright

Attached is a memo to concerned agencies notifying them of a meeting at Ft. Wainwright to discuss the public access problem .

I plan on attending the meeting, and unless you have any objection, presenting the same position addressed in the Governor's letter to General Vail. Please let me know if there are any special instructions, or change in policy or position.

cc: Dick LeFebvre

150-3

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND & WATER MANAGEMENT

Mike Whitehead, Special Assistant
Office of the Governor

September 3, 1981

1450

279-5577 ex. 224

Frank G. Mielke, Chief
Land Management

Access across military reservation

Attached is a draft letter requested at a Department meeting, for the Governor's signature, regarding problems the civilian population is having gaining access across Ft. Wainwright to private land.

Also attached is a background paper summarizing activities on the matter.

Please let me know if more information is necessary.

cc: Jeff Haynes, Deputy Commissioner



DEPARTMENT OF THE ARMY
HEADQUARTERS, 172D INFANTRY BRIGADE (ALASKA)
FORT RICHARDSON, ALASKA 99505

REPLY TO
ATTENTION OF:

AFZT-JA

28 AUG 1981

Richard A. LeFebvre, Deputy Director
Division of Forest, Land and Water Management
State of Alaska Department of Natural Resources
323 E. 4th Avenue
Anchorage, Alaska 99501

Forest, Land & Water Mgmt.

Director's Office

Dear Mr. LeFebvre:

This responds to your letter of 7 August 1981 in which you request a meeting to discuss land management matters of mutual interest.

I assume the "major concern" you have expressed in your letter is connected with the issues which arose after my decision to control access to Fort Wainwright. It is my understanding that these issues were discussed in some detail during a meeting at Fort Wainwright on 25 June 1981 attended by representatives of many of the same organizations and groups which are identified in your letter. The legal issues concerning our mutual land management matters appear to be the only basis for further discussion.

I suggest that appropriate legal personnel from your office, the State Department of Transportation and Public Facilities, the State Attorney General's Office and the military participate in a meeting. The primary purpose of such a meeting would be to ensure a clear understanding of the legal issues regarding public use of roads and rights-of-way which cross military reservations.

My Staff Judge Advocate, Lieutenant Colonel William J. Lehman, is my point of contact for the meeting. His phone number is 862-2214.

Sincerely,

NATHAN C. VAIL
Brigadier General, USA
Commanding

156.3

AFZT-STW

7 August 1981

The Honorable John A. Carlson
Mayor, Fairbanks North Star Borough
P. O. Box 1263
Fairbanks, Alaska 99701

Dear Mayor Carlson:

At our meeting on June 25, 1981, we discussed various alternatives to the Lazelle Road access to private land abutting the eastern boundary of Fort Wainwright. Attention was focused on the possibility of bridging the Chena River to Badger Road. Upon further study of this problem, I have determined that the Army may be able to provide the land for the bridge site. However, before we can take action, we must receive a request from an appropriate State or local office.

I suggest that you arrange for a survey to determine a suitable location for the bridge. If the site is on land under our control, you should submit a request for the dedication of this land to the State or the Borough, through this office. I will forward the request to the appropriate authorities.

We will continue to provide temporary access permits to those individuals who own land adjacent to Fort Wainwright's eastern boundary and can reach their land only through the Post. As I stated at the meeting, these permits have been issued and will continue to be issued with the understanding that the Borough and the State will endeavor to provide an alternate access route. I do not anticipate granting permits to future purchasers and would hope that the Borough would take steps to discourage further development of the area until this matter is resolved.

I wish to thank you for your assistance and cooperation. I know that, with our combined resources, we can arrive at a mutually suitable resolution of the problem. I look forward to hearing from you.

Sincerely,
BECKETT

CF:
Mr. James Nordale
✓ Mr. Frank Mialke

REC-15 10 52 AM '81
BERNARD B. BROWN
COL, FA
Commanding
DIAZICK 01 20821

150-3

ALASKA

August 7, 1981

Re: Request for Meeting

Nathan C. Vail
Brigadier General, USA
Commanding
172nd Infantry Brigade
Fort Richardson, Alaska 99505

Dear Commanding General Vail:


The Department of Natural Resources hereby requests a meeting at the earliest possible time to discuss land management matters of mutual interest to the military and the State of Alaska.

Of major concern to the State is the use by the public of roads and public rights-of-way that cross military reservations.

Attendees will be representatives of the Commissioner's Office, the Division of Forest, Land and Water Management, the Department of Law and concerned public members and other federal officials. The names of the attendees will be furnished when the date of the meeting is confirmed.

If you have any further questions, feel free to contact my office at 279-5577.

Sincerely,


Richard A. Lefebvre
Deputy Director

cc: Jeff Haynes, Commissioner's Office
Bill Copeland, Northcentral District Office
Lyle Carlson, Attorney

180-3

1. Note in paragraph (c) how the commander cannot arbitrary use discrimination in excluding civilians from post. (See Cafeteria & Restaurant Workers Union v. McElroy 367 U.S. 886 (1961).)
2. He must also act on a reasonable basis (See Bridges v. Davis, 443 F2d 970, 445 F2d 1401 (9th Cir 1971), cert. denied, 405 U.S. 919(1972).)
3. Abuse of discretion found to unreasonable (See Kiiskila v. Nichols, 43 F2d 745(7th Cir. 1970.))
4. Note loss of control over base access (See Flower v. United States, 407 U.S. 197 (1972) rev. 452 F.2d 80 (5th Cir 1971.) Again (See Jenness v. Forbes, 351 F Supp 88 (D.R.I. 1972).)
5. For more on what is open and closed bases (See U.S. v. Gourley 502 F2d 785)
- * 6. Most important is the case law in U.S. v. Watson, 80 F. Supp 649. In this historical case it states that just because the Federal Government takes over land for its use does not mean that it has total control over the roads that existed prior to the take over of the land, very important in this case and also that it makes it clear that the Federal Government cannot prohibit and cut land off from the state that it belongs to.
7. See the following cases in support of the Federal Government having to provide new roads to replace the old roads when acquiring land for use in military bases. (See U.S. v. Des Moines Co, 148 F2d 448 and 326 U.S. 743., U.S. v. Certain Lands, 246 F2d 823 and County of Sarpy, Neb. v. U.S., 386 F2d 465.)

(PROPOSED LETTER)
(Fort Wainwright Letterhead)

AFZF-521

4 August 1981

The Honorable John A. Carlson
Mayor, Fairbanks North Star Borough
P.O. Box 1263
Fairbanks, Alaska 99701

Dear Mayor Carlson:

At our meeting on June 25, 1981, we discussed various alternatives to the Lazelle Road access to private land abutting the eastern boundary of Fort Wainwright. Attention was focused on the possibility of bridging the Chena River to Badger Road. It was my understanding at the conclusion of our meeting that your office would review potential site selections for such a bridge. The Army may be able to provide the land for the bridge site, however, before we can take action, we must receive a request from an appropriate State or local office.

I suggest that you arrange for a survey to determine a suitable location for the bridge. If the site is on land under our control, you should submit a request for the dedication of this land to the State or the Borough, through this office. I will forward the request to the appropriate authorities.

We will continue to provide temporary access permits to those individuals who own land adjacent to Fort Wainwright's eastern boundary and can reach their land only through the Post. As I stated at the meeting, these permits have been issued and will continue to be issued with the understanding that the Borough and the State will endeavor to provide an alternate access route. I do not anticipate issuing permits to future purchasers and would hope that the Borough would take steps to discourage further development of the area until this matter is resolved.

I wish to thank you for your assistance and cooperation. I hope that, with our continued cooperation, we can arrive at a mutually suitable resolution of the problem. I look forward to hearing from you.

Sincerely,

RENEE B. BROWN
COL, FT.
Commanding

180-3

Honorable Ted Stevens
United States Senate
260 Russell Office Building
Washington, D. C. 20510

Dear Senator Stevens:

I am writing in response to your letter of 26 June 1981 concerning my decision to control access to Fort Wainwright.

As I pieced together the rather fragmented correspondence over the past several weeks concerning access to and through Fort Wainwright, I realized I had failed to fully inform you of my reasons and actions we have taken to accommodate valid concerns of local civilians. My message to the Chief of Staff in response to your initial query and subsequent letters to you were apparently not sufficiently comprehensive. I also realize now that the "four page, unsigned memorandum" you refer to was not intended to respond to your query but rather it was an attempt to provide your staff assistant in Fairbanks with a courtesy copy of our press release for the local media. I can well understand your exasperation under the circumstances. Please be assured any correspondence from this command to you I attend to personally.

I decided to control access only after a careful analysis of all relevant factors. These factors included: use of the post by civilians as a shortcut to locations outside our boundary; increased use of the Trainor Gate by large commercial trucks and other vehicles crossing the post near ammunition and petroleum storage areas to gain access to a housing development in the Potlatch Ponds area; and, incidents of speeding, larceny, and other criminal activity involving civilians who had no valid reason to be on the post. Local officials and other community leaders were informed of the pending controls and they were supportive of the measures being taken.

150.3

... trouble the traffic along River Road and Luzelle Road. They

military services have maintained the roads and controlled access. Only in the late 1970's was control relaxed. In view of this fact, it hardly seems reasonable to claim these two roads as public highways. Trainor Road (Trainor Gate) and Montgomery Road, which leads from Badger Road gate, have never been considered public highways and were never open on a 24-hour basis. As you can see, access was not limited simply because of the crime problem.

We recognized that this decision would result in some personal inconvenience to local civilians. We published notice of the event in the community newspapers hopeful that those with valid concerns would be forthcoming as we could accommodate their needs for access to Fort Wainwright. Apparently, they chose to register their complaints with your office rather than with us, State, or local officials.

Realizing that had occurred and with the discovery that there was no formal body to discuss issues such as this, I instructed Colonel Brown to work with the Mayor to establish a council that would include key officials (military and civilian) and civic leaders to meet regularly to discuss issues of mutual concern. I will participate. Our first meeting is scheduled on 15 July 1981.

Concurrent with my decision to control access, I instructed Colonel Brown to ensure the establishment of a system that would allow uninterrupted access for civilians to frequent Fort Wainwright for business or other purposes on the installation. In that regard, adjustments have been made to the Badger Gate ^{ROAD} ~~lanes~~ to accommodate civilian and military personnel who live in the Badger Road area. And the Provost Marshal will have a representative present during registration to issue passes to those living in the Badger Road area and attending school on Fort Wainwright. The gate will be opened for access to and from school. As other valid concerns arise, we will surely accommodate them in the same reasonable and responsible fashion.

At the request of the Alaska Department of Natural Resources, limited permits were granted to individual owners of property in the Potlatch Ponds area. On 5 June 1981, Colonel Brown and members of his staff met with representatives of the

to the eastern boundary (post). This route passes by the fuel tank farm and pipeline from Eielson Air Force Base as well as the post ammunition storage area (ASA). Non-military traffic interfered with ammunition convoys, presenting a potential hazard to life. Munitions stored in the ASA include high explosive and fragmentation weapons, which, if accidentally detonated in their storage area, could cause death or injury to persons using these roads. Some items are radio-detonated and, if not properly shielded, could be set off by a nearby CB radio. Temporary storage areas closer to the road present increased problems of security and risk of injury to passersby.

I discovered we were suffering considerable expense maintaining bridges and roads damaged by increased traffic, particularly heavy equipment used by developers and gravel pit operations. The roads were simply not designed for this sort of traffic, and they are in need of constant repair. Also, our existing traffic control systems are not designed for heavy volumes of traffic.

On reflection, I failed to adequately respond to your 17 June 1981 ALASCOM telegram requesting me to document the authority for "limiting use of Trainor Gate Road and Lazelle Road on Fort Wainwright." The limitation of access to a Post is authorized by Article I, Section 8, of the Constitution of the United States and Army Regulation 210-10. The Authority is further discussed by the Supreme Court in Cafeteria Restaurant Workers Union Local 473, AFL-CIO v. McElroy, 367 US 886 (1961), and subsequent cases.

I should point out that the "public right-of-way" alluded to in your letter consists of Lazelle Road and what is now known as River Road, not the roads leading from Trainor or Badger gates. The land encompassing River Road was taken for military use by Public Land Order #7596 in March of 1937, and portions of Lazelle Road were taken by public Land Order #139 in August of 1946. Since those dates, the land has been controlled by the military without public access. No claim was made to these roads by the state for over thirty years. During this period, the

Alaska Department of Transportation and Public Facilities, the State Attorney General's Office, the Fairbanks-North Star Borough Mayor and Attorney and interested property owners. The legal aspects and practical considerations were addressed in detail without contest. Clearly, State and Borough officials recognized the need to provide access to the property across the Chena River. It was agreed that an alternate access route which does not cross Fort Wainwright is the most desirable solution. Consequently, representatives of my command, the District Engineer, and Borough will meet to determine how to proceed with a right-of-way permit through the Army pipeline crossing the Chena River and determine if the site is suitable for a bridge. With the fine cooperation we've gotten from local folks led by Jim Messer and John Carlson, I am confident we will find a suitable solution.

I apologize for such a lengthy piece of correspondence, but I consider it necessary to fully explain all aspects of the issue.

Please be assured I am most respectful of your concern in this matter. Hopefully, the information supplied is sufficient to respond to understandable concerns by those in the Fairbanks/Fort Wainwright area. I will remain personally involved to ensure a satisfactory outcome in this matter and in pursuit of harmonious relations with a city that has always been supportive of the Army.

I am hopeful that in August you and your staff assistant will have the time to visit my headquarters for briefings on new directions we are taking and discuss matters of mutual concern.

Sincerely,

NATHAN C. VAIL
Brigadier General, USA
Commanding

Delta Junction Office
Nistler Building
Delta Junction, Ak. 99737
Telephone: 895-4449

LAW OFFICES OF
LYLE R. CARLSON

JUL 30 1981

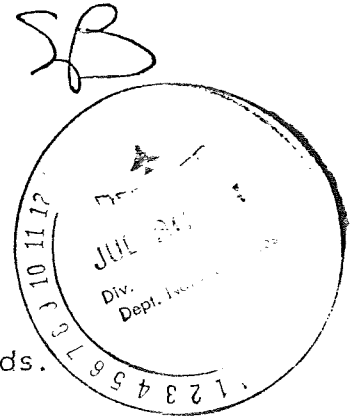
Director's Office

Room 206, NBA Bldg.
7th and Cushman
Fairbanks, Alaska 99701
Telephone: 452-3498

Post Office Box 2741
Fairbanks, Alaska 99707

July 16, 1981

Mr. Jeff Haines
Deputy Commissioner
Dept. Natural Resources
Pouch M
Juneau, Ak. 99811



RE: Dispute with U.S. Army regarding closure of local roads.

Dear Jeff:

I'm sorry I missed your call which you made when you were in Fairbanks during the past few weeks. At the time I was out of town and I did not return until several days later. It is my understanding you called me about the present dispute between the State of Alaska and the U.S. Army with respect to the military's rather intransigent policy of refusing to permit reasonable access into the area north of Fort Wainwright.

During the past year or so I have been working with my client, Paul Schultz, with respect to thi problem. I am presently in the process of drafting a complaint against the U.S. Army as both Paul and myself both feel that they have not been realistic in evaluating their exposure based on what appears to be illegal closure of public roads. I can certainly understand why the Army closed Lasalle Road as closure occurred soon after the commencement of W.W.II and the needs for strong security were compelling. We have examined all of the documents which apparently are available which set out the rights of the Army and the extent of the property required by the Army as to the area in question and we find no instance where the Army legally terminated existing public roads. Obviously, the public did "discontinue" the use of some public roads in that area but that discontinuance occurred because the Army gave the public no choice - namely, the roads were blocked off. Therefore, it would appear that "abandonment" should not be a serious issue.

I would appreciate your views and ideas with respect to the drafting and presentment of a complaint and - hopefully - this is a case which the State would actively pursue based on the State's interest in the entire area. As you know the Army has continued to deny access to many individuals in this community and you have probably been advised that a number of local residents are currently unhappy with the recent actions taken by the Army. 150-3

I anxiously await your response.

Sincerely,



LYLE R. CARLSON

LRC/bc
cc: Paul Shultz.

COMPUTER LETTER
COMPOSITION FORM

DATE 07/14/81

COMPOSE YOUR LETTER IN THE SPACE BELOW.
FILL IN THE SUBJECT OF THE LETTER AND
PUT AN 'Y' IN THE 'REGISTERED' FIELD IF
YOU WANT AUTOMATIC NOTIFICATION WHEN THE
LETTER IS RECEIVED BY THE ADDRESSEE.

ADDRESSEE: DNR OFFICE-JUNEAU
SUBJECT: JEFF HAYNES
TEXT OF LETTER:

TO BE DATED: 07/14/81
REGISTERED: N

> RE: FRAYNOR GATE. NDDO ATTEMPTED TO CONTACT CORPS. SO SEE W/ >
> MEETING HAD BEEN SET AS PER DISCUSSION AT FT. WASHINGTON. >
> CORPS SAID CONTACT GEN. NATHAN VAIL, HQS, 1/2ND INF BDE, >
> RICH. THIS ACTION IS CONTRARY TO EARLIER AGMT. THAT CORPS >
> WOULD BE LIAISON. GEN. NOT CONTACTED BY NDDO. ADVISES NDDO >
> IS DOING NOTHING. STATUS FROM NDDO THRU I. SMITH TO 100. NDDO >
> RED. ACTION NECESSARY AT DIRECTOR OR COMMISSIONER LEVEL. >
> INITIATE W/O. SUGGEST WE INITIATE W/O. FOR JUNE 22. FBX. >
> PLEASE ADVISE. ADMIRAL R. A. LEBERKRE

1 = SEND

2 = ERASE

3 = PRINT & SEND

4 = SEND & CONTINUE

5 = PRINT

SIGNED: DNR - dnf:adm

180.3

DEPARTMENT OF NATURAL RESOURCES - DIVISION OF FOREST, LAND AND WATER MANAGEMENT

TO: Jeff Haynes
Deputy Commissioner

DATE: 6/19/81

FILE NO: 2410

TELEPHONE NO: 279-5577

FROM: Frank G. Mielke, Chief
Land Management

SUBJECT: Military Meeting Scheduled
for 6-25-81

To reiterate the facts stated in my telephone conversation of yesterday regarding the above subject with Commissioner LeResche:

(1) On 6-17-81 Deputy Commissioner Haynes directed me to set up a meeting with the military, affected State agencies and the concerned public to discuss access to private land through Ft. Wainwright.

(2) The same day I contacted Ernest Woods of the Corps of Engineers. In previous discussions with the military, it was agreed that the COE would be the contact agency concerning land related matters. I asked what channels to go through to set up a meeting, and his reply was that the commanding officer of the affected facility was the proper person to contact.

(3) I called the office of the Post Commander of Ft. Wainwright, Col. Brown, and set up a meeting for 6-25-81, 10:00am, at Post Headquarters.

(4) I proceeded to call all persons to attend the meeting to inform them of the time and date of the meeting.

(5) On 6-18-81 I returned a call to Mr. Woods who informed me the meeting was cancelled, because some superior officer was coming to Alaska. When I told Mr. Woods that Col. Brown's office had made the appointment, his reply was that Col. Brown should have checked with the Commanding General's Office. Mr. Woods further said that if DNR wanted to reschedule the meeting, a letter should be written to Brig. Gen. Nathan Vail, 172n Infantry Brigade, Ft. Richardson.

*Sent to Comm's Off. via teletypewriter 6/19/81
talk to Comm's 6-18-81; said he would
relay message to Jeff.*

FJM 180-3

QUADRANGLE 100 TRAIL 73B

NAME TRAIL SYSTEM 73B

IDENTIFICATION FAIRBANKS AREA EAST DIGITAL AND THEN NORTH.

SOURCE USGS FAIRBANKS 1952 REV 1969
BIG DELTA 1958 REV

DESCRIPTION FAIRBANKS T1S, R1W & R1, 2, 3, 4E
EM S1/2 T1N R1W, S1/2 T1N R1E, T1N R2, 3, 4E
S 1/2 T2N, R2&3E FM

QUADRANGLE 100 TRAIL 73D

NAME 73D-SYSTEM

IDENTIFICATION OLNES & DOME MINING AREAS
GILMORE & FOX MINING AREAS

SOURCE USGS FAIRBANKS 1952 REV 1969
LIVINGOOD 1956 REV

DESCRIPTION N1/2 OF T1N R1E & R1W
T2N R1E & R1W
T3N R1E & R1W
S1/2 OF T4N R1W

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: Stephen C. Sisk
Design Chief
Northern Region

DATE: December 21, 1983

FILE NO:

TELEPHONE NO:

FROM: Danny Johnson
Location/Recon. Engr.
Northern Region

SUBJECT: Access to Lands
East of Ft. Wainwright

Problem: To develop an access route to the private and State-owned lands east of Ft. Wainwright and north of the Chena River. The only existing access to this area is via the Ft. Wainwright road system, and the military would like to discontinue permits for private vehicles passing through the Fort.

Past studies of this problem indicate that there are acceptable solutions:

Alternative 1 - Bridge the Chena River east of Ft. Wainwright in the vicinity of Dennis Road.

Alternative 2 - Construct a new access road from Chena Hot Springs Road along the east side of Ft. Wainwright.

Alternative 3 - Construct a new access road west from Nordale Road along the north bank of the Chena River.

These alternatives are shown on the attached map and are discussed in more detail below.

Alternative 1

The possibility of constructing a new bridge across the Chena River at Dennis Road was studied in 1981. At that time the cost of the bridge was estimated at \$2,885,000 for a structure and approaches meeting secondary highway standards.

While such a bridge may be the best long-term solution to the access problem, the cost seems excessive in view of the low traffic volumes that would be served.

A more acceptable version of alternative #1 would be to install a lower cost temporary bridge structure that could be replaced when development north of the river warranted a permanent bridge.

Alternative 2

Alternative 2 begins at 3 mile Chena Hot Springs Road and runs south along a section line easement for the first mile. The proposal would then enter military lands and would bend to the east to provide clearance from Ft. Wainwright's ammo dump. Ft. Wainwright officials have indicated that the military would grant an easement for the new road. As drawn on the map, the route may not be quite as far from the ammo dump as the military would like. However, shifting the route any farther to the east would place it on the extremely poor foundations that prevail along Columbia Creek. Even as drawn, portions of the route encounter less than favorable foundation conditions.

From the Fairbanks Base Line, Alternative 2 runs south along the boundary of Ft. Wainwright and then bends back to the west to terminate at the 1/4 corner between Section 9 and 10.

Except for a short cut section at Sage Hill, Alternative 2 would be all overlay construction. This would entail 3.8 miles of new roadway. The cost of constructing a minimum standard 20 ft. road along the Alternative 2 route is estimated at \$825,000.

Alternative 3

There is an existing road running west from Nordale Road through the center of Section 6. This road was originally built to provide access to the large gravel pits in the southeast corner of Section 1. The road has since been extended 1/4 mile beyond the gravel pits. Alternative 3 would extend this road westward along the north side of the river to connect to an existing road that runs east-west across Section 10.

The new segment of road would be 1.5 miles long and would require acquisition of private property. The cost of a minimum standard roadway for Alternative 3 is estimated at \$550,000.

The table below shows some direct comparisons of the three alternatives.

Alternative	Cost	Travel Distance*
1 Permanent Bridge	\$2,885,000	7.4 miles
1 Temporary Bridge	**	7.4 miles
2 Chena Mt. Sp. Access	\$ 825,000	11.3 miles
3 Nordale Rd. Access	\$ 550,000	17.9 miles

* Travel distance as measured from the intersection of Airport Road and the Richardson Highway to the 1/4 corner between Sections 9 and 10 north of Dennis Road.

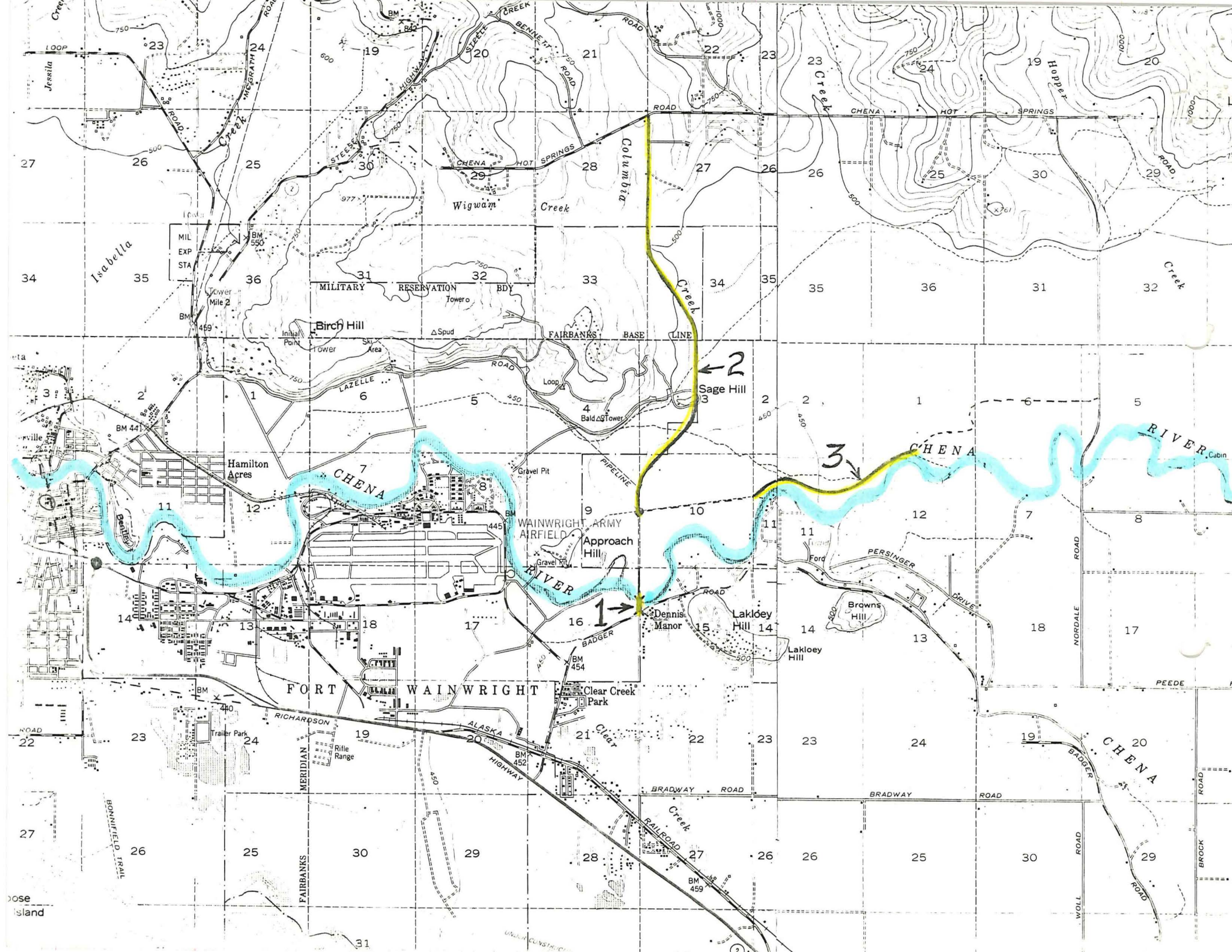
** The cost of installing a temporary bridge has not been determined but should be considerably lower than the cost of a permanent structure.

In view of the significant adverse travel distances involved with Alternative 2 and Alternative 3, bridging the Chena River (Alternative 1) is certainly the most desirable option from a user standpoint. We should pursue the possibility of installing some type of temporary bridge in order to keep costs within practical limits.

According to Karl Mielke of the Bridge Design Section, there are some old bridges stockpiled that could span the Chena River. Old Taylor Highway bridges from South Fork and the Fortymile River are examples. However, Mielke points out that these are one-lane bridges. He believes that we might have problems installing a substandard bridge, particularly if Federal funds are involved.

DJ/dc

Attachment



12/20/85

Meeting Re: FFW/W Access

Richard Spittle

Mary Allen

Sen. Beffersworth

~~Mary~~ Cifer Kay

FHSD - Consider Public R/W of

Would Litigate

- Bridge not acceptable position
- FHSD Card Use Plan - provides for filling
- Carzette Rd. is it (not CHS Trail)
- Need R/W or Dedicated Easement? Check
- Try w/ Beffersworth - if he is FHSD
will litigate
 - o Cover w/ Dist. use of State Lands

CHMA

o Large Scale Pilot Project

o Call Larry Sweet - Bill
Zybach will complete FHSD

to assist communities
in developing local transportation
plans

RS 2477

Jerry,
I want to look
this with our R/W section
to be sure this coincides with
the state's position.
DP.

There is also an extensive network of public rights-of-way in the state, established under Revised Statute 2477 (43 U.S.C. 932). An inventory and listing of RS 2477 rights-of-way was made by the state and is available at the regional offices of the Department of Transportation and Public Facilities. Although RS 2477 was repealed in 1976 by Public Law 94-579 sec. 706 (90 stat. 2793), those rights-of-way previously established remain valid.

Since RS 2477 was written briefly and in a nonspecific manner, it does not establish criteria for determining the location or width of the rights-of-way. So, except for a few major roads specified in a public land order and a secretarial order, the right-of-way width is the actual width of a particular road, trail or path at that particular point, ~~which is not established under RS 2477.~~ In a few recent instances, thirty feet is the established width.

Jerry,
I checked with
R/W on this and the
Attorney General's office
and it is ok as is
with the wording ok too.
D.P.

This word doesn't follow in view of last paragraph

No such determination has been made for the other

RIGHTS OF WAY

Cross references: See subtitles "Railroads and Rights of Way," p. 47, and "Trade and Manufacturing Sites," p. 67, under "Alaska"; "Forest Reserves," p. 137; subtitle "Stock-Raising Homesteads," under "Homesteads," p. 177; subtitles "Rights of Way Over Indian Lands," under "Indian Lands," p. 274; Secs. 2339 and 2340, R. S. p. 317, and subtitle "Leasing of Mineral Lands," under "Mineral Lands," pp. 341, 358, 359; "National Parks," p. 376; subtitles "Railroad Rights of Way," pp. 477, 482, and "Wagon Road Grants," p. 483, under "Railroad Grants"; "Fact Finders' Act," under "Reclamation," p. 512, "Reservoir Sites," p. 615; "Timber and Stone Lands," p. 707; "Federal Water Power Act," under "Water Power," p. 754.

NAVIGABLE RIVERS THROUGH PUBLIC LANDS

Sec. 2476, R. S. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall become common to both. (U. S. C., title 43, sec. 931.)

Navigable rivers within public lands to be public highways.

May 18, 1796, 1 S., 408; Mar. 3, 1803, 2 S., 235.

HIGHWAYS OVER PUBLIC LANDS

Cross references: See "Alaska," p. 67; subtitle "Rights of Way," under "Indian Lands," p. 279; subtitles "Railroad Rights of Way" and "Wagon Road Grants," under "Railroad Grants," pp. 477, 482, 483.

Sec. 2477, R. S. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. (U. S. C., title 43, sec. 932.)

Right of way for highways over public lands.

July 26, 1866, 14 S., 253.

An Act To amend the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes

* * * * *

Sec. 17. That if the Secretary of Agriculture determines that any part of the public lands or reservations of the United States is reasonably necessary for the right of way of any highway or forest road or as a source of materials for the construction or maintenance of any such highway or forest road adjacent to such lands or reservations, the Secretary of Agriculture shall file with the Secretary of the department supervising the administration of such land or reservation a map showing the portion of such lands or reservations which it is desired to appropriate.

Use of public lands for rights of way or materials.

Application for.

If within a period of four months after such filing the said Secretary shall not have certified to the Secretary of Agriculture that the proposed appropriation of such

Transfer to State authorities if not objected to.

Act of	Chapter	Section	Statute at Large	48 U.S. Code
1. Mar. 2, 1895	174		23: 744	176.
2. June 28, 1834	865	8	48: 1272	315g.
June 26, 1930	842	3	49: 1976, title I.	
June 19, 1948	548	1	62: 533	
July 9, 1962	P.L. 87-524		76: 140	315g-1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only.	35: 845	772.
June 25, 1910	J. Res. 40		36: 881	
5. June 21, 1934	659		48: 1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.
7. June 6, 1871	223		18: 62	1153; 1154.
8. Jan. 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 84	1156.
10. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
11. July 14, 1960	P.L. 86-649	101-202(a), 203-204(a), 301-303.	74: 506	1361, 1362, 1303-1363.
12. Sept. 26, 1970	P.L. 91-429		84: 885	1362a.
13. July 31, 1939	401	1, 2	53: 1144	

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 706. (a) Effective on and after the date of approval of this Act, R.S. 2177 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System:

Effective date.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				661.
The following words only: "or rights to ditches and reservoirs used in connection with such water rights."				
Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1896	427	1	30: 1233	665, 953, (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934-939.
May 14, 1898	267	2-9	30: 409	942 1 to 942-9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18-21	26: 1101	946-949.
Mar. 4, 1917	184	1	39: 1197	
May 28, 1926	408		44: 688	
Mar. 1, 1921	93		41: 1194	950.
Jan. 13, 1897	11		20: 484	952-955.
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1866	37		28: 635	951, 956, 957.
May 14, 1866	179		29: 120	
May 11, 1868	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 5, 470, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1952	338		66: 95	
May 21, 1886	212		29: 127	962-965.
Apr. 12, 1910	155		36: 296	966-970.
June 4, 1857	2	1	30: 35	16 U.S.C. 551.
Only the eleventh paragraph under Surveying the public lands.				
July 22, 1937	517	31, 32	59: 525	7 U.S.C. 1010-1012.
Sept. 3, 1954	1355	1	68: 1146	931c.
July 7, 1960	Public Law 86-608		74: 363	40 U.S.C. 345c.
Oct. 23, 1962	Public Law 87-892	1-3	76: 1129	40 U.S.C. 319-319c.
Feb. 1, 1905	288	4	33: 628	16 U.S.C. 524.

Telephone/Conference Data

Date: 12/20/83 Re: Ft. Hanover Access

People Involved: Commissioner Glenzer
Rep Bob Bittisworth

Topics:

Glenzer and Bittisworth had lunch on 12/16/83.
Glenzer made commitment to Bittisworth to follow through on the Department's attempts to find a solution to the access problem.

Glenzer and Bob McMullen will talk to a General in Anchorage

Bob

Response/Follow-up: We need to change our tack since we wrote the Analysis outline 12/14/83. We need to be more positive & strengthen the State's role. We will follow up the Analysis outline with a preferred analysis as requested by Bob Bittisworth.

Signed By: Janice

Copies To: John Maxin
Charity Fechter

FORT WAINWRIGHT ACCESS
Analysis Outline

Analyst: Janice Wagner
December 14, 1983

*Repscom'd to Mae Mullen
12/14/83*

I. ISSUE

Access for private property east of Fort Wainwright is provided on a restricted basis via military controlled roads. Subdivision and financing of these properties is not possible given this access arrangement. Dedicated public access is desired.

II HISTORY

1. The access problem intensified by the closure of Trainor Gate in 1981.
2. Is the road through the military reservation a State road, was it built with Alaska Road Commission funds?
3. Was the original intent to provide access to Chena Hot Springs? If so, does the new Chena Hot Springs Road replace the River/Lazelle Road to Chena Hot Springs?

III THE ARMY'S POSITION

1. Security is jeopardized by open public access through the reservation.
2. Adequate access is already being provided.
3. They have formally offered and verbally rescinded support for alternative access (bailey bridge).

IV AGENCY INVOLVEMENT

Fairbanks North Star Borough: The previous administration did not feel a responsibility to deal with the problem. Mayor Allen, however, would like to coordinate with DOT to negotiate a solution with the military.

Department of Natural Resources: Commissioner Katz was promised a bailey bridge and Corps of Engineers troops for construction by the previous Commander in Alaska, General Vail.

Citizen Advisory Commission on Federal Areas: The Commission was advised by Assistant Attorney General Robert Price that it should consider a request to DOT for further factual research into the claim of right-of-way.

Office of the Governor:

Jay Hammond threatened litigation in September, 1981.

No followup.

Representative Bob Bettisworth:

1. Would like DOT to conduct a factual analysis.
2. Wants full public access from the Steese Highway via the foot of Birch Hill along the north side of the Chena River (through the military reservation) onto the private property north and east of Fort Wainwright.

Senator Ted Stevens: Military security should not be threatened by access through the reservation.

IV AGENCY INVOLVEMENT (Cont'd)

Department of Transportation & Public Facilities: The Department has been contacted repeatedly in the past two years by one of approximately 20 affected property owners. A large amount of research has been done in addition to meeting with the military. The Department is now at the point where we are questioning our responsibility in this issue. In that regard we are soliciting an opinion from the Attorney General as to what our role should be in this issue.

V IMPLICATIONS FOR DOT

The Department has already spent thousands of dollars in work hours in an effort to research and help solve the problems. Is this appropriate considering our limited resources and the number of people the access road will serve?

VI ALTERNATIVES

1. Access via existing roads (River/Lazelle) north of Chena River through Fort Wainwright.
 - a. Litigation by affected property owners.
 - b. Bargaining by other agencies:
 - DNR - for military use of State lands for training purposes
 - FNSB - for basic community relations
 - DOT - for
2. Construct a new access road west from Nordale Road along the north bank of the Chena River.
3. Construct a new access road from Chena Hot Springs Road along the east side of Fort Wainwright.
4. Bridge the Chena River east of Ft. Wainwright in the vicinity of Dennis and Badger Roads.

VII DISCUSSION & COSTS

Alternative 1: Provides a solution for minimum capital costs; is the most direct access from Fairbanks; poses substantial security and access problems for the military. Fencing has been proposed to mitigate these problems but was rejected by the military. No cost estimate for fencing has been prepared.

Alternative 2: Provides access to substantial residential acreage but the routing from Fairbanks is rather circuitous. The construction cost is roughly \$550,000.

Alternative 3: Access to adjacent residential acreage is more limited than alternative 2. This route is also rather circuitous from Fairbanks. The construction costs are approximately \$825,000.

Alternative 4:

While such a bridge may be the best long term solution to the access problem, the costs seem excessive in view of the low traffic volumes that would be served. The construction costs are approximately \$3,000,000. The possibility of obtaining a lower cost temporary bridge is being explored.

Using our project evaluation criteria, it does not appear likely that Alternatives 3-5 will be included in a forthcoming budget request.

VIII RECOMMENDATIONS

1. Pursue the military's access construction assistance offer through General Bethke.
2. Since there is no funding program to support further efforts, we close the case until there is a major new development.